

Date: June 10, 1997

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In Re:

[REDACTED]

Claimant

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Claims Case No. 97011408

## CLAIMS APPEALS BOARD DECISION

### DIGEST

1. Generally, the fact that an employee has salary sent directly to a bank does not relieve the person of the responsibility of verifying his bank statements, questioning any discrepancies, and setting the money aside for repayment.
2. A civilian employee of the Navy who was erroneously paid salary by his previous duty station for two pay periods after the effective date of his reassignment, is considered partially at fault where he did not question the overpayments when deposited to his bank account. Waiver under 5 U.S.C. 5584 is precluded.

### DECISION

This is in response to an appeal of the U.S. General Accounting Office's (GAO) Settlement Certificate, Z-2943017-050, dated August 6, 1996, which denied waiver under 5 U.S.C. 5584 of a Department of Defense (DoD) employee's debt to the United States resulting from erroneous payments of salary. Pursuant to Public Law 104-316, October 19, 1996, the authority of the Comptroller General to waive a claim of the United States against a person arising out of an erroneous payment of pay (salary) or allowances, including travel, transportation or relocation expenses and allowances, was transferred to the Director, Office of Management and Budget (OMB). The Director of OMB delegated his waiver authority involving all uniformed service members and civilian employees of the DoD to the Secretary of Defense. The Defense Office of Hearings and Appeals exercises the authority of the Secretary.

### Background

The record indicates that the claimant received a reassignment from Italy to Spain, effective January 13, 1995. Through administrative error, his reassignment Standard Form 50, Notification of Personnel Action, was not processed in a timely manner; therefore, he continued to receive paychecks from his assignment in Italy after the effective date of his reassignment.<sup>(1)</sup> Since the employee also received salary from his new assignment, he received dual compensation causing an overpayment in the gross amount of \$4,044.80.

The employee states that he did not receive his leave and earnings statements for the pay periods in question until March 21, 1995, and was unaware of the first overpayment until he noticed a deposit in his bank account in February 1995. He further states he assumed the money was either for a cash award from his previous assignment, which he says was verbally promised him, or housing allowance.

GAO denied his waiver request on the grounds that he should have questioned the validity of his entitlement to receive salary payments from both his old duty station and his new duty station for the same period.

On appeal, the employee argues that he notified the Comptroller in Italy immediately after noticing the discrepancy, apparently the day after he received his leave and earning statements for the pay periods in question. Additionally, he argues that his case is distinguishable from that of the employee in the case cited by the Comptroller General. The employee argues that he did not immediately receive his leave and earnings statements for the pay periods in question due to the fact that the local post offices or paying offices overseas are not as efficient as the stateside offices; thus, things take longer to reach people because of the distance.

## Discussion

Under 5 U.S.C. 5584, we may waive a claim for an overpayment of pay an employee received if collection would be against equity and good conscience and not in the best interest of the United States, provided there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee. In the present case the erroneous payments were made as a result of administrative error and there is no indication of fraud, misrepresentation, or lack of good faith on the employee's part in that regard. However, an employee is considered to be at least partially at fault and waiver is precluded when the employee receives a significant unexplained increase, or otherwise knows, or reasonably should know, that an erroneous payment has occurred and fails to make inquiries or bring the matter to the attention of the appropriate officials. See Standards for Waiver, 4 C.F.R. 91.5(b) (1996). In addition, the Comptroller General has held, and we agree, that the fact that a service member or employee has pay sent directly to a bank does not relieve the person of the responsibility of verifying his statements and questioning any discrepancies. See MS1 Johnny Singletary, USN (Ret), B-254328, Nov. 17, 1993.

The employee's waiver request was denied by the Navy and GAO based on their findings that he should have recognized the likelihood that an error had been made in his pay when he received salary payments in the amounts he did from his previous duty station after the effective date of his reassignment.

We have considered the arguments presented by the claimant. It may be that he was expecting a cash award from the previous duty station. It is unlikely, however, that a reasonable person would expect an award of the dollar amount he received in February. It is more unlikely that he would expect a second award payment of similar dollar value the following pay period. The claimant provides no evidence of the dollar amount of the cash award he anticipated nor that he was anticipating two. The verbal promise of a cash award, if made, does not absolve the employee of the responsibility for taking a reasonable degree of care in monitoring his own pay and reporting questionable items to appropriate agency officials. An expectation of receiving a housing allowance, the other reason the claimant gives for believing the February deposit was appropriate, does not absolve the employee either.

The employee acknowledges that he was aware of a deposit from his prior duty station in February 1995 and took no action at that time to question its reasonableness. He took action after he received his leave and earnings statements which documented the overpayments. The delay in his having received these statements does not absolve him of the responsibility for questioning either deposit. The employee should have questioned appropriate officials at his prior duty station as to the reason for the payments when first aware of the deposits, rather than assuming their appropriateness and waiting for the written explanation in the leave and earnings statements. See Joan R. Edwards, B-271616, Oct. 3, 1996. If this action had been taken in February, it could have avoided the overpayment in March. Since he did not do so, he is considered at least partially at fault in the matter, and waiver is therefore precluded.

## Conclusion

We uphold the denial of the waiver request.

/s/

Michael D. Hipple

Chairman, Claims Appeals Board

/s/

Christine M. Kopocis

Member, Claims Appeals Board

/s/

Jean E. Smallin

Member Claims Appeals Board

1. The employee's salary was directly deposited into his bank account stateside. The two deposits at issue were for \$806.35 and \$826.68. The record shows that the previous four salary deposits ranged from \$935.00 to \$1,381.50. The employee also received deposits of \$1,170.90 and \$1,658.73 from his new duty station for the pay periods in question.