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In Re:

[Redacted]

Claimant

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DATE: July 17, 1997

Claims Case No. 97062629

## CLAIMS APPEALS BOARD DECISION

### DIGEST

An employee who knows or should know that she received an erroneous payment of salary is obliged to return that amount, or set aside an equivalent amount for refund to the government when the error is corrected.

### DECISION

, a civilian employee of the Department of the Army, appeals the decision of the Defense Office of Hearings and Appeals (DOHA) which allowed the waiver of only \$1,644 of the \$2,740 erroneously overpaid to her as salary.<sup>(1)</sup>

### Background

In its administrative report, the Defense Finance and Accounting Service (DFAS) - Denver Center, reports that the employee was erroneously paid \$2,740 in basic salary during the period July 1, 1995, through August 5, 1995. Apparently this resulted when First United States Army at Fort eade, Maryland downsized its civilian work force and the employee was transferred on paper to another Army command. The record indicates that the employee received a duplicate overpayment for 40 regular hours (\$548) for the Pay Period Ending (PPE) July 8, 1995, and 80 regular hours (\$1,096) for each of the PPEs July 22, 1995, and August 5, 1995. While there was some question as to whether the employee had received leave and earnings statements (LES) for the first two pay periods involved, she did receive an LES from two separate offices each showing she had received a regular base salary payment of \$1,096 for the PPE August 5, 1995. Our Office agreed with DFAS that the employee should have questioned this duplication.

The employee contends that the finding that she should have questioned her entitlement to the duplicate salary payment "is an untrue statement." She argues that she did question the accuracy of her pay voucher as soon as she received it. She thought it was reasonable to expect a duplicate payment because it looked to her like a way to pay for 80 hours annual leave erroneously deducted from her leave account by the pay office of the command she had just left. The record indicates that the employee had over 30 years of Federal service.

### Discussion

Our waiver authority, 5 U.S.C. 5584, applies to a claim against an individual arising out of the erroneous payment of pay or allowances to an employee, the collection of which would be against equity and good conscience and not in the best interest of the United States. The statute further provides that waiver cannot be granted if there is any indication of fraud, fault, misrepresentation, or lack of good faith on the part of the person having an interest in obtaining the waiver. See 5 U.S.C. 5584(b)(1) and the Standards for Waiver, 4 C.F.R. 91.5(b). The standard employed to determine whether a person was at fault in accepting an overpayment is whether, under the particular circumstances involved, a reasonable person should have known or suspected that he was receiving more than his entitlement. See Petty Officer Ricky Johnson, USN, B-256417, July 22, 1994; Captain Douglas K. Basiger, USAF, B-256600, July 14, 1994; Bryan E. Lippman, B-201816, July 8, 1981.

There is no indication of fraud, misrepresentation or lack of good faith by the employee with respect to the debt, but DFAS and our adjudicators reasonably concluded that the employee was at least partially at fault because she should

have questioned her entitlement to receive a duplicate payment of salary especially with her receipt of LESs showing payment of base salary in the same amount from two different sources during the same pay period. We do not believe that an employee with so many years of service would reasonably have believed that the duplicate payment of base salary was an alternative method of correcting her leave balance. Perhaps this is why the employee questioned the PPE August 5 LESs as soon as she received them.

In any event, a service member or employee derives no entitlement to an erroneous payment of pay or allowances just because the government, however incompetently, makes a mistake. The legal precedent is well-established that it is not against equity and good conscience to recover such indebtedness where the recipient of the erroneous payment knew or should have known that the payment was erroneous, and the knowledge of such an overpayment carries with it the obligation to return that amount, or set aside an equivalent amount for refund to the government when the error is corrected. See, for example, DOHA Claims Case No. 97052732 (July 8, 1997); DOHA Claims Case No. 97011404 (April 4, 1997); Major Kenneth G. Brown, USAF, Retired, B-238127, June 28, 1991. Accordingly, waiver is inappropriate.

### **Conclusion**

We affirm the Settlement Certificate.

Signed: Michael D. Hipple

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Michael D. Hipple

Chairman, Claims Appeals Board

Signed: Christine M. Kopocis

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Christine M. Kopocis

Member, Claims Appeals Board

Signed: Jean E. Smallin

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Jean E. Smallin

Member, Claims Appeals Board

1. Settlement Certificate of May 7, 1997, under DOHA Claim No. 97041001.