

Date: July 23, 1997

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In Re:

[Redacted]

Claimant

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Claims Case No. 97050502

## CLAIMS APPEALS BOARD DECISION

### DIGEST

An employee is indebted for the gross amount of an overpayment of salary. Although an employee does not receive directly all monies which she is indebted to repay, the taxes and other amounts were withheld on her behalf. This withholding does not reduce the amount of her indebtedness.

### DECISION

This is in response to an appeal of DOHA's Settlement Certificate, DOHA Claim No. 97016154, dated April 22, 1997, 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.

#### Background

The record indicates that effective April 24, 1994, the employee transferred from the Department of the Navy (Navy) to the Defense Logistics Agency (DLA). Due to an administrative error, she received erroneous salary payments from the Navy for the period April 25, 1994, through April 30, 1994. As a result, the employee was overpaid in the gross amount of \$1,002.24, \$585.29 direct payment and \$416.95 withheld for benefits and taxes.

In May 1994, the employee contacted her Navy branch timekeeper and division timekeeper concerning irregularities in her pay, specifically what she believed to be an overpayment by Navy and an underpayment by DLA. Salary payments from both sites were deposited directly into her bank account. In June 1994, the Navy requested repayment for one week plus 1 day's holiday pay, or \$713.13 gross. The employee did not dispute the overpayment, but calculated the amount of her debt to be \$585.29, and submitted a check in that amount. Her calculations are based on the net payment for these days minus an offset for additional tax burden. The employee refused to accept responsibility for the recovery of money withheld for union dues, Medicare, taxes, etc. In January 1995, DFAS notified the employee of her indebtedness for the gross amount of the overpayment. The employee submitted a request for waiver in February 1995, which DFAS denied.

The Settlement denied waiver of the gross amount, finding that the employee was partially at fault in the matter for not having questioned her entitlement to receive salary from the Navy after she was transferred.

On appeal, the employee requests waiver of \$416.95, the amount withheld for taxes and benefits. The employee emphasizes that in February 1995 she repaid the \$585.29 which had been paid directly to her. She contends that the \$416.95 was never in her possession and repayment of this amount will cause a financial hardship. She argues that the overpayment was the result of a negligent act of government personnel entrusted to administer the payroll and the government should be held accountable for any harm that comes from this error.

#### 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. 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). The fact that an employee has salary sent directly to a bank does not relieve the person of the responsibility of verifying her bank statement, questioning any discrepancies, and setting the money aside for repayment. See DOHA Claims Case No. 97011408 ( June 10, 1997).

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. The employee took appropriate action in May 1994 by contacting finance offices to discuss potential discrepancies in her salary payments for the period in question.

We appreciate the fact that the employee made restitution for the net amount of salary received; however, we point out that an employee is indebted for the gross amount of the overpayment. The Comptroller General has held, and we agree, that although an employee does not receive directly all monies which she is indebted to repay, the taxes and other amounts were withheld on her behalf and this withholding does not reduce the amount of her indebtedness. See Charles R. Ryon, Sr., B-234731, June 19, 1989, and decisions cited therein. The employee should contact the Internal Revenue Service for information concerning adjustment of her tax liability as the result of making repayment of the overpayments she received. See Amadeo Martinez, Jr., B-261628, June 13, 1996, and decisions cited therein. In the event that the DFAS is able to directly recoup amounts withheld for the employee, such as life insurance, Medicare, states taxes, or other benefits, then the amount of indebtedness owed by the employee may be diminished accordingly. Finally, a personal or family financial hardship is no basis for waiver. See DOHA Claims Case No. 97041401 (June 26, 1997).

### **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