

DATE: September 23, 1997

In Re:

[Redacted]

Claimant

Claims Case No. 97090809

CLAIMS APPEALS BOARD DECISION

DIGEST

An employee contacted the proper authorities that her salary was incorrect due to an error in her leave calculations. The resulting debt cannot be waived. When an employee is aware that she is being overpaid, she cannot reasonably expect to retain the overpayments, but must set them aside for eventual repayment when the error is corrected.

DECISION

This is in response to an appeal of DOHA's Settlement Certificate, DOHA Claim No. 97016162, May 21, 1997, which denied in part the request of a retired employee for waiver of a debt which arose when her sick leave account was incorrectly credited.

Background

The record indicates that the employee was erroneously paid \$2,938.36 basic salary during the period of October 29 through December 23, 1995. Due to medical reasons, the employee was placed on sick leave status in October 1995. She did not have sufficient sick leave hours accumulated and, on October 11, 1995, requested advance sick leave and enrollment in the "Donated Leave Program" (LDP). She was not granted advance sick leave; however, she received sick leave hours through the LDP. Due to an administrative error on the part of the civilian payroll office personnel, the employee was credited with more hours than she actually received, resulting in the overpayment. The employee was notified on February 8, 1996, of a \$353.20 overpayment.

Due to her medical condition, the employee was unable to verify her leave and earnings statements (LEs) between October 11, 1995, and December 1995. Upon reviewing her LEs, she felt she was being overpaid and questioned her civilian payroll office personnel on December 13, 1995. At that time, she was informed that her pay was correct. The employee was not convinced that her pay was correct and she requested further review of her pay account. In early April 1996, she was notified of a debt in the amount of \$2,585.16, thus increasing the original debt to \$2,938.36.

DFAS believed the employee acted in good faith from October 29, through November 25, 1995, and she reasonably would not have been aware of the error in her pay during this period of time. DFAS recommended waiver of \$353.20 based on good faith. DFAS noted that the employee realized her pay was incorrect and that she notified the civilian payroll office on December 13, 1995, before she received the \$1,202.40 check for the period November 26 through December 9, 1995. The employee should reasonably have set aside this check and the one received December 29, 1995, until an audit of her pay account was completed.

In the Settlement Certificate, our adjudicators agreed the employee acted in good faith in accepting the overpayment totaling \$353.20 and that once she realized her leave was miscomputed and notified the civilian payroll office, she should have retained the amounts she subsequently received. The Settlement concluded that collection of the \$2,585.16 would not be against equity and good conscience, nor would it be contrary to the best interests of the United States.

On appeal, the employee states that after being assured by her civilian payroll office that her pay was correct, just in case there was an error in her pay record, she waited two additional weeks before spending the checks. She states that

"having heard nothing, I assumed it was safe to spend the money." The employee states that she has attempted repeatedly since December 1995 to get clarification of her pay. Further, the employee points out that no personnel action was submitted putting her in a leave without pay status up to the time of her retirement on February 23, 1996; therefore, she believes she should have continued to earn sick and annual leave and be paid for holidays until the time of retirement. Additionally, the employee states that repaying the debt would create a great financial hardship on her.

Discussion

Under 5 U.S.C. § 5584, we may grant waiver of erroneous payments of salary to a civilian employee or former employee of the Department of Defense if collection would be against equity and good conscience and not in the best interest of the United States and if there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee. See Standards for Waiver, 4 C.F.R. § 91.5(b). Prior waiver decisions indicate that when an employee is aware of an overpayment, she cannot expect to retain the money. Rather she has a duty to set aside the money for repayment. In such a situation, collection is not against equity and good conscience and is in the best interest of the United States. See Charles R. Ryon, Sr., B-234751, June 19, 1989; DOHA Claims Case No. 97031009 (July 18, 1997).

In the present situation, the employee knew in December that her leave was incorrectly calculated. She correctly brought the government's failure to make the reduction to the attention of the proper authorities and waited a period of time before spending the money. While we appreciate the employee's diligence in informing the appropriate officials of the overpayment, and recognize the administrative delay in correcting it, these are not bases for approval of waiver. Waiver is precluded because she was aware that she was being overpaid and thus had a duty to set the overpayments aside for repayment. See Charles R. Ryon, Sr., B-234731, supra. An employee cannot assume that the error has been corrected in the absence of official notice that the payments were not in error.

Finally, a personal or family financial hardship is no basis for waiver. See DOHA Claims Case No. 97041401 (June 26, 1997).

Conclusion

We affirm the Settlement Certificate.

/s/

Michael D. Hipple

Chairman, Claims Appeals Board

/s/

Christine M. Kopocis

Member, Claims appeals Board

/s/

Jean E. Smallin

Member, Claims Appeals Board