

DATE: January 9, 1998

In Re:

[Redacted]

Claimant

Claims Case No. 97111908

CLAIMS APPEALS BOARD DECISION

DIGEST

1. A debt which arises due to reconciliation of an employee's Living Quarters Allowance (LQA) cannot be considered for waiver under 5 U.S.C. § 5584 if the LQA payments were proper when made.
2. Under 5 U.S.C. § 5584, an employee must request waiver of a debt within three years after the agency involved discovers the erroneous payments which gave rise to the debt.
3. An employee must present a claim involving pay and allowances within six years of the accrual of the claim. After six years, the claim is barred.

DECISION

This is in response to an appeal of DOHA's Settlement Certificate, DOHA Claim No. 97052722, June 24, 1997, which denied the request of a former Department of Defense employee for waiver of a debt which arose because final calculation of her allowable housing expenses was less than the Living Quarters Allowance (LQA) she had received.

Background

The employee was working overseas and was entitled to LQA. Final calculation of her allowable housing expenses for the period December 15, 1985, through June 13, 1986, indicated that the LQA she had received exceeded her allowable expenses by \$2,820.19; she was therefore indebted to the government by that amount. The final calculation was performed in October 1986. The record contains copies of letters dated December 16, 1986, and March 24, 1988, by which the finance authorities attempted to notify the employee of the debt. The letters were sent to the last address which the employee provided. The employee states that she moved from that address in December 1986 and did not become aware of the debt until 1995. She requests waiver of the debt under 5 U.S.C. § 5584. She also argues that the amount of the debt is incorrect. The record contains a Statement of Service indicating that her employment continued until August 18, 1986. She contends that the final LQA calculation should include the period from June 13 until August 18.

Discussion

Under 5 U.S.C. § 5584, we may waive a claim for an erroneous payment of pay or allowances if collection would be against equity and good conscience and not in the best interest of the United States, provided there is no evidence of fraud, fault, misrepresentation, or lack of good faith on the part of the member.

The debt before us involves LQA, payment of which is governed by 5 U.S.C. §§ 5922-5923. LQA may be paid in advance. Periodically, a reconciliation is performed, and the employee is required to repay the amount by which the amount he received exceeds his allowable expenses.⁽¹⁾ Under 5 U.S.C. § 5584, we are unable to grant waiver in this instance because there is no indication that the LQA payment was erroneous when made. By definition, a payment must be erroneous when made if it is to be considered for waiver. See B-270306, Dec. 3, 1996.⁽²⁾

As pointed out in the Settlement Certificate, an employee must request waiver within three years after the overpayment is discovered by the government. See 5 U.S.C. § 5584(b)(3). The record before us indicates that the debt was discovered in October 1986. Despite the government's attempts to notify the employee of the debt, she states that she did not learn of the debt until 1995. She filed a waiver request in December 1995. Therefore, her application would not have been timely even if the payment had been erroneous. See 54 Comp. Gen. 133 (1974).

The employee argues that her employment continued for two months after the period covered by the LQA reconciliation and that a recalculation including those two months would reduce or eliminate her debt.⁽³⁾ However, claims involving pay and allowances must be presented within six years of the accrual of the claim. See 31 U.S.C. §3702(b)(1). Since the claim arose in 1986, it cannot be considered. Moreover, it appears that the records necessary to pursue the claim were destroyed in the normal course of business due to the passage of time. We are therefore unable to consider the employee's claim regarding the amount of her debt.

Conclusion

We affirm the Settlement Certificate.⁽⁴⁾

_____/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. Under 5 U.S.C. § 5922(b), the head of the agency involved may waive the excess amount under regulations of the President. See Standardized Regulations promulgated by the State Department for civilian employees living overseas.

2. In the present situation, we note that the employee is not entirely without fault because she did not keep her employer apprised of her current address for a reasonable period of time after she ceased working. However, we do not reach the issue of fault under 5 U.S.C § 5584, since we cannot consider the debt for waiver in the absence of an erroneous payment.

3. We note that the Standardized Regulations cited in footnote 1 indicate that LQA is paid during the summer recess for teachers who are returning to teach in the fall. If they are not returning, LQA apparently ends at the end of the school year. See Standardized Regulations, paragraph 723.1.

4. If the employee has not done so, she can request that the agency involved consider waiving her debt under 5 U.S.C. § 5922(b) according to the Standardized Regulations, paragraph 113.4, although the passage of time and the lack of records may prevent consideration at that level also.