
In Re:

[Redacted]

Claimant

DATE: May 14, 1998

Claims Case No. 98020429

CLAIMS APPEALS BOARD DECISION

DIGEST

The total amount of an employee's debt for the erroneous overpayment of pay and allowances includes both the amount the employee received directly and other amounts disbursed on his behalf for such items as Medicare, health benefits, savings, life insurance, retirement, and Federal and state tax withholding.

DECISION

A civilian employee appeals the December 11, 1997, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 97111807 which upheld the Defense Finance and Accounting Service (DFAS)'s determination not to waive an employee's debt for erroneous overpayment of salary.

Background

In its administrative report, DFAS states that the employee was erroneously overpaid \$3,355.20, basic salary, plus \$840 standby premium, during the period from September 29, 1996, through December 21, 1996, for a total debt of \$4,195.20. The error occurred when the personnel or payroll office processed a Notification of Personnel Action (SF 50) for a within grade increase (WIG) from a GS 12, Step 6 to a GS 12, Step 7 (which the employee says should have been effective on September 29, 1996), that incorrectly raised the employee's salary to an annual rate of \$91,193.75, plus a standby premium of \$8.74 per hour, in lieu of \$72,955, with a standby premium of \$6.99 per hour. The error was discovered in January 1997.

The personnel/payroll office failed to process the WIG in a timely manner, and the employee did not see any change in his Leave and Earnings Statement (LES) until the pay period ending on November 23, 1996. When he received his LES on November 29, 1996, he was unable to determine how much of the increase in salary from the previous LES was due to error and how much of it was due to a retroactive payment. DFAS reports that the employee questioned his personnel/payroll office at that point and was advised to wait until the next pay period to report problems. When the employee received the next LES on December 13, 1996, he reported an overpayment to his personnel/payroll office. The office advised him that his salary was correct, but the employee continued to claim that there was a discrepancy. When he received the next LES on December 27, 1996, he insisted that the problem be corrected so that his 1996 tax return would not be affected. The personnel/payroll office did not correct the problem until January 1997.

The employee contends that it is improper to recover the gross amount of the overpayments from him. Essentially, he does not dispute that he owes the net amount of the overpayment actually received by him because he knew that the personnel/payroll office was in error. However, he contends that it is against equity and good conscience to collect from him the portion of the overpayments representing the amounts paid by the agency for such things as Federal income tax withholding, state tax withholding, Medicare, and life insurance. He provides us a detailed estimate of differences between the amounts withheld and what should have been withheld. The employee cites us to the Comptroller General's decision in Dolores Gutowsky, B-238580, May 10, 1991, as authority for waiving the portion of the overpayment representing the various types of withholding referenced above. The employee requests an investigation or hearing on this matter.

Discussion

Section 5584 of title 5, United States Code (5 U.S.C. § 5584) provides authority for waiving claims for erroneous payments of pay and certain allowances made to specified Federal employees, if the collection of the debt would be against equity and good conscience and not be in the best interests of the United States.

Our Office applies the same practices and procedures that had been applied by the General Accounting Office when the Comptroller General settled waiver applications.⁽¹⁾ The Comptroller General did not provide for a hearing in settling waiver applications. See Brian P. Happy, B-214932, May 29, 1984. Moreover, the agency which was responsible for the overpayment must determine the facts surrounding the erroneous payment, not the Comptroller General or this Office as his successor. See 4 C.F.R. § 92.3. While we do not necessarily adopt the employee's estimates of the excess withholding, for purposes of this appeal we accept the employee's position that he tried to alert the proper officials about the payroll problems he had experienced. As DFAS's report indicates, the personnel/payroll office committed error in this matter, and it did not rectify its mistakes until after the end of the 1996 tax year. For purposes of this decision we recognize that the employee did act reasonably in bringing the payroll mistakes to the attention of the proper officials; however, even if we accept the employee's rendition of the facts, this does not result in the outcome sought by him.

In this matter, the employee has not claimed and is not entitled to retain the net amount of the overpayment actually received by him. The long-standing rule is that persons receiving money erroneously paid by a government agency or official acquire no right to the money, and a person who is aware that a payment was erroneous cannot expect to retain that money. Such a person has the duty to set aside the money for eventual return to the government. In such a situation, collection is not against equity and good conscience and is in the best interest of the United States. See DOHA Claims Case No. 97031009 (July 18, 1997); and DOHA Claims Case No. 97011409 (June 6, 1997).

In the Dolores Gutowsky decision cited by the employee, the employee was not aware that the government had mistakenly overpaid her by assigning her to the wrong step. Here, in contrast, the employee knew the correct step and was aware that he was being overpaid. Thus, it was proper in Dolores Gutowsky to waive the entire indebtedness, but not to do so here. When it is inappropriate to waive an employee's debt for the overpayment of pay and allowances, the Comptroller General consistently held that the total amount of the employee's debt included both the amount the employee received directly and other amounts disbursed on his behalf for such items as edicare, health benefits savings, life insurance, retirement, and Federal and state tax withholding. See Alfred H. Varga, B-260909, Dec. 17, 1996; Fort Polk Employees, B-261699, Oct. 25, 1996; and Charles R. Ryon, Sr., B-234731, June 19, 1989, and decisions cited therein. In continuing the same practices and procedures as the Comptroller General, we have adopted the same rule. See DOHA Claims Case No. 97102801 (November 6, 1997). The employee should contact the Internal Revenue Service and state tax authorities concerning adjustment of tax liabilities as the result of making repayment of the overpayments received. See Amadeo Martinez, Jr., B-261628, June 13, 1996, and the decisions cited therein. If DFAS is able to directly recoup amounts withheld for the member, such as Federal Employees Group Life Insurance, Medicare, or other benefits, then the amount of the indebtedness owed by the employee can be diminished accordingly.

Conclusion

We affirm the Settlement Certificate.

Signed: Michael D. Hipple

Michael D. Hipple

Chairman, Claims Appeals Board

Signed: Christine M. Kopocis

Christine M. Kopocis

Member, Claims Appeals Board

Signed: Jean E. Smallin

Jean E. Smallin

Member, Claims Appeals Board

1. See 62 Fed. Reg. 5387 (February 5, 1997).