

**This decision was affirmed by the Deputy General Counsel (Fiscal), Department of Defense, on February 14, 2001.**

July 8, 1998

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In Re:

[Redacted]

Claimant

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Claims Case No. 98040112

## **CLAIMS APPEALS BOARD DECISION**

### **DIGEST**

Under 5 U.S.C. § 5584, when an employee is aware that she is receiving overpayments, she does not acquire title to the excess amounts, and she has a duty to hold the money for eventual repayment. In such circumstances waiver is not proper.

### **DECISION**

This is in response to an appeal of DOHA's Settlement Certificate, DOHA Claim No. 98030216, March 3, 1998, which denied the waiver request of a civilian employee of the Department of Defense. The employee's debt in the gross amount of \$1,993.60 arose when she was erroneously paid administrative uncontrollable overtime (\$142.40 per pay period for 14 pay periods).

### **Background**

The record indicates that the erroneous payments began when the employee's pay records were converted to the Defense Civilian Pay System in June 1996. Due to an administrative error, a code was apparently inserted in her records which caused payment of the overtime premium from June 23, 1996, through January 4, 1997. The employee was aware of the error when she received her leave and earnings statement for the first pay period in which it occurred and promptly notified the proper authorities. When the overpayments continued, she continued to bring them to the attention of the appropriate individuals. She argues that since she behaved correctly in notifying the proper authorities and since the erroneous payments still continued for 14 pay periods, it is the intent of the waiver regulations that her debt be waived.

## Discussion

Under 5 U.S.C. § 5584, this Office may waive claims of the United States against DoD employees arising out of erroneous payments of pay only when collection of the erroneous payments would be against equity and good conscience and not in the best interest of the United States and only when there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee or any other persons having an interest obtaining a waiver. See Standards for Waiver, 4 C.F.R. § 91.5. The Office with the statutory authority to implement the Standards for Waiver was previously the General Accounting Office (GAO) and for this case is now this Office. GAO carried out its authority by issuing decisions which interpreted the Standards, as this Office does now. This Office renders decisions in accordance with 5 U.S.C. § 5584, the Standards for Waiver, and the prior decisions of the Comptroller General and this Office.

Those decisions have consistently stated the long-standing rule that a person who receives erroneous payments from the government does not acquire title to the money and has a duty to return the money when asked to do so. Under such circumstances, a person could not reasonably expect to retain the overpayments. When a person is aware that she is receiving overpayments, collection of the excess amounts is not against equity and good conscience and is in the best interest of the United States. See DOHA Claims Case No. 98031704 (June 24, 1998); and Philip W. McNany, B-198770, Nov. 13, 1980.

In the case before us, the employee states that she was aware that she was receiving overpayments. We agree that she acted properly in notifying the appropriate officials of the error. While it is unfortunate that the error continued for 14 pay periods, the employee never acquired title to the amounts paid erroneously, especially when the employee knew that she was being overpaid. She should have held the excess amounts for eventual repayment. See Philip W. McNany, B-198770, supra. Therefore, the debt cannot be waived.

The employee is indebted for the gross amount of the overpayments, since amounts withheld for federal taxes were paid out on her behalf. GAO and this Office have consistently held that an employee's tax situation is a matter for her to settle with the Internal Revenue Service after she has repaid her debt to the government. See DOHA Claims Case No. 98020429 (May 14, 1998); and Fort Polk Employees, B-261699, Oct. 25, 1996.

## Conclusion

We affirm the Settlement Certificate.

/s/ \_\_\_\_\_

Michael D. Hipple

Chairman, Claims Appeals Board

\_\_\_\_\_/s/\_\_\_\_\_

William S. Fields

Member, Claims Appeals Board

\_\_\_\_\_/s/\_\_\_\_\_

Jean E. Smallin

Member, Claims Appeals Board