

October 13, 1998

In Re:

[Redacted]

Claimant

)

Claims Case No. 98062401

CLAIMS APPEALS BOARD DECISION

DIGEST

An employee was erroneously reimbursed for a VA funding fee when he purchased a house pursuant to a permanent change of station move. Since he was verbally advised of the error promptly, collection of the resulting debt is not against equity and good conscience, even though written notification was delayed. Waiver of the debt under 5 U.S.C. § 5584 is therefore precluded.

DECISION

This is response to an appeal of DOHA's Settlement Certificate, DOHA Claim No. 97062627, January 30, 1998, which denied the waiver request of a civilian employee of the Department of Defense. The employee's debt arose when he was erroneously reimbursed for a Veterans Administration (VA) funding fee.

Background

Pursuant to a permanent change of station, the employee was authorized reimbursement for real estate expenses. On June 3, 1996, he submitted a DD Form 1705, and reimbursement was approved for real estate expenses in the amount of \$9,186.50, including a VA funding fee of \$5,250. The administrative report indicates that during the week of June 10, 1996, the employee took a friend to the Human Resources Office so that the friend could request similar reimbursement. At that time a relocation coordinator discovered that the employee's reimbursement for the VA funding fee of \$5,250 had been in error. The file contains a copy of an e-mail message which the coordinator sent to her supervisor on June 13, 1996, in which she stated that she had explained to the employee that the VA funding fee had been paid to him by mistake and that he had agreed to repay that amount in installments after he received written notification of the debt from the Personnel Support Detachment (PSD). The record contains a copy of a contemporaneous e-mail message which substantiates her statement. The file also contains a memo for the record which the coordinator wrote in May 1997 and which restates the above information. In the memo she stated that she notified the PSD of the error on July 8, 1996. The record also contains a memo from the PSD which states that the PSD received the coordinator's letter dated July 8, 1996, regarding the erroneous payment, but did not formally notify the employee about the debt until the employee contacted them on another matter. In the Settlement, we denied waiver because the employee was notified of the error promptly. On appeal, the employee questions the documentation of the notification. He also believes he is entitled to the VA funding fee.

Discussion

Under 5 U.S.C. § 5584, we have the authority to waive collection of erroneous payments of pay or allowances to DoD employees 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. Comptroller General decisions indicate that collection is not against equity and good conscience when the employee is promptly notified of the erroneous payment. See John Wessels, B-265874, May 22, 1996; Richard C. Clough, B-230423, Mar. 13, 1989; and Seymour Zirin, B-204974, June 24, 1982.

We base our decisions on the written record submitted by the agency involved as well as evidence submitted by the employee. In this case, the relocation coordinator has stated that she verbally notified the employee that payment of the VA funding fee was erroneous. We have no reason to question her statement. If the employee wishes to contest the agency's record as outlined above, he must provide clear and convincing evidence to the contrary. While the employee did not receive written notification of his debt, there is sufficient indication in the record that he was told of the debt within ten days of the erroneous approval of the payment. Verbal notification was sufficient to put the employee on notice that the agency considered the payment to be erroneous, and lack of written confirmation does not entitle him to waiver. See Terry R. Allison, et al., B-256934, Sept. 20, 1994; and Ensign Dean A. Barsaleau, B-252857, Oct. 26, 1993. As discussed above, collection is not against equity and good conscience when an employee is notified of the erroneous payment promptly. We consider notification within ten days to be prompt notification. See John Wessels, B-265874, supra. In that decision, notification within three weeks was considered prompt.

Our authority in the matter before us covers only the employee's request for waiver of repayment of the VA funding fee he received. We have no authority to render a decision on his entitlement to the funding fee itself. If the employee feels that the agency's determination in that regard is in error, he should pursue that issue with the agency.

Conclusion

We affirm the Settlement Certificate.

/s/ _____

Michael D. Hipple

Chairman, Claims Appeal Board

/s/ _____

Christine M. Kopocis

Member, Claims Appeals Board

/s/ _____

Jean E. Smallin

Member, Claims Appeals Board