

DATE: September 1, 1998

In Re:

[Redacted]

Claimant

)

Claims Case No. 98072904

CLAIMS APPEALS BOARD DECISION

DIGEST

Employee who received salary payments from her old duty station and her new duty station for six pay periods following her reassignment is considered at least partially at fault for not questioning appropriate officials about her entitlements. Waiver of the overpayments is denied.

DECISION

This is in response to an appeal of our May 11, 1998, Settlement Certificate, DOHA Claim No. 98041501, which denied a DoD employee's request for waiver of a debt to the government. The debt of \$5,332.80, arose when the employee received erroneous payments of basic salary for the six pay periods during the period June 22, 1997, through September 13, 1997.

Background

The record shows that the employee was reassigned from a DoD agency in South Carolina to another DoD agency in Virginia effective on June 22, 1997. However, due to an administrative error, the employee erroneously received salary payments from both agencies for six pay periods. As a result, the employee was overpaid \$5,332.80 (\$888.80 x 6 pay periods).

The employee requested waiver stating that she did not receive leave and earning statements (LES) from her old duty station for the period in question and assumed the payments deposited to her bank account represented funds for her permanent change of station move. DFAS recommended waiver of the overpayment for the period June 22 through July 5, 1997. DFAS reasoned that the employee would not have been aware of the error until she received her bank statement. The Settlement Certificate did not agree with DFAS's recommendation, and handled all the overpayments in the same manner. The Settlement Certificate denied the waiver request stating that under the circumstances the employee should have questioned the receipt of salary payments from both her old duty station and her new duty station for the same period.

On appeal the employee reiterates her claim that she did not receive an LES from her old duty station during the period in question. She also states that the dollar amount deposited in her account did not coincide with a payroll payment and her conclusion was that the payment was a PCS advance for travel and lodging at her new duty station.

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 and allowances only when collection 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 in obtaining a waiver. See Standards for Waiver, 4 C.F.R. § 91.5 (1996). The standard employed to determine whether a person was at fault in accepting an

overpayment is whether, under the particular circumstances involved, a reasonable person should have known or suspected that she was receiving more than her entitlement. See George S. Winfield, 66 Comp. Gen. 124 (1986); DOHA Claims Case No. 97122313 (February 24, 1998). An individual who should have known or did in fact know that a payment was erroneous has a duty to set aside the overpayment for its eventual return to the government. The employee is at fault if she does otherwise. In such circumstances, collection action of the erroneous payment is neither against equity and good conscience nor contrary to the interest of the United States. See Dennis R. Nix--Reconsideration, B-249371.2, April 30, 1993; DOHA Claims Case No. 97011409 (June 6, 1997).

As in the Settlement Certificate, we will handle the overpayments for all six pay periods in the same manner. Even though the employee would not have been aware of the dual payments issued for June 22 through July 5, 1997, until she received her bank statement, she did not have a right to retain dual salary payments. The employee acknowledges that during the period in question she was aware of a significant unexplained increase in her pay. When she received her salary payments plus six payments similar in amount to her salary, the employee should have at least questioned appropriate officials about her entitlement. She should have verified her conclusion that the monies were for her PCS advance. For purposes of waiver, she is considered to be at least partially at fault. Waiver is precluded because she failed to make inquiries or bring the matter to the attention of the appropriate officials. See 4 C.F.R. § 91.5(b) (1996).

Conclusion

We affirm the Settlement Certificate.

_____/s/ _____

Michael D. Hipple

Chairman, Claims Appeals Board

_____/s/ _____

Michael H. Leonard

Member, Claims Appeals Board

_____/s/ _____

Christine M. Kopocis

Member, Claims Appeals Board