

October 29, 1998

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In Re:

[Redacted]

Claimant

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Claims Case No. 98081726

## CLAIMS APPEALS BOARD DECISION

### DIGEST

An employee's pay began to be miscalculated in 1990 following a personnel action which was taken after he was injured at work. He was notified of the miscalculation in February 1996. Under 5 U.S.C. § 5584, the amounts he erroneously received before he was notified are waived because he was unaware of the error. The amounts he was paid after notification may not be waived because he did not acquire title to those amounts and had a duty to return them when asked to do so.

### DECISION

This is in response to an appeal of DOHA's Claims Settlement, DOHA Claim No. 98042013, May 11, 1998, which waived \$69,464.29 of an employee's debt of \$70,995.49, and denied waiver of the remaining \$1,531.20. The debt arose when the employee's pay was miscalculated between September 1990 and March 1996.

### Background

According to the record before us, the employee was injured on the job on October 19, 1988. When it was later determined that the injury prevented him from performing the duties of his position as a TC-I, he was erroneously advised in a memo dated August 6, 1990, that he was being reassigned to the grade of GS-4, but would retain the grade of TC-I for two years and the pay of a TC-I indefinitely. A memo dated July, 16, 1997, states that the action that should have been taken was a "change to a lower grade" with a pay retention entitlement. Under the "change to a lower grade," his pay should have been calculated at 150 percent of the pay of a GS-4 step 10. According to the administrative report, the employee was overpaid from September 2, 1990, through March 2, 1996. He was notified that he was being overpaid on February 8, 1996. Because the employee had no way of knowing of the overpayments until he was notified by telephone on February 8, 1996, we waived the \$69,464.29 he received through January 20, 1996. We denied waiver of the \$1,531.20 he received after he became aware of the error. The employee argues that the balance should be waived because of the actions and errors of the agency.

### 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. *See* Standards for Waiver, 4 C.F.R. § 91.5(b) (1996). Our decisions indicate that waiver is not appropriate when the employee is aware that he is being overpaid. *See* DOHA Claims Case No. 98040118 (July 6, 1998); DOHA Claims Case No. 97082535 (November 4, 1997).

In our Settlement Certificate we waived collection of the \$69,464.29 which the employee received prior to notification. We properly denied waiver of the \$1,531.20 which was paid to him after he was notified. When an employee is aware that he is being overpaid, waiver is not appropriate. He does not acquire title to the excess payments and has a duty to

return the erroneous amounts to the government when asked to do so. *See* DOHA Claims Case No. 98040118, *supra*; and DOHA Claims Case No. 97082535, *supra*.

While the employee requests waiver of the balance of his debt because of the administrative errors committed by his agency, administrative error does not provide a basis for waiver. *See Master Sergeant Haywood A. Helms, USAF, B-190565, Mar. 22, 1978*. Our authority in the matter extends only to the issue of waiver of the employee's debt. If he continues to have questions and concerns regarding any other aspect of his situation, he should pursue them through the appropriate channels.

### **Conclusion**

We affirm the Settlement.

/s/

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Michael D. Hipple

Chairman, Claims Appeals Board

/s/

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Christine M. Kopocis

Member, Claims Appeals Board

/s/

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Jean E. Smallin

Member, Claims Appeals Board