

November 19, 1998

---

In Re:

[Redacted]

Claimant

---

)

Claims Case No. 98110227

## CLAIMS APPEALS BOARD DECISION

### DIGEST

An employee's installation was targeted for closing, and the employee was permitted to accrue annual leave in excess of 240 hours per year as Base Realignment and Closure (BRAC) leave. The employee had 175.3 BRAC leave hours at the end of 1994. The first leave and earning statement (LES) in 1996 credited him with an additional 118 BRAC leave hours for 1995. However, in February 1996, a subsequent LES credited the employee with an additional 118 hours of BRAC leave. The employee was terminated in June 1996 due to a reduction in force, and he received payment for the additional 118 hours of 1995 BRAC leave that was erroneously credited. The employee should have questioned the second accreditation of 118 hours. His statement that he relied upon an audit of his leave account just before termination, and a general statement from a pay official that his leave account was in order, does not relieve him of at least partial fault for the erroneous overpayment resulting from the crediting of the additional 118 hours. His waiver request is denied.

### DECISION

A former Navy employee appeals DOHA's Claims Settlement, DOHA Claim No. 98042805, September 4, 1998, which sustained the Defense Finance and Accounting Office's (DFAS) denial of his application for waiver of a debt of \$1,944.64. In February 1996, the Navy erroneously credited the employee with 118 hours of accrued annual leave in excess of the amount that the employee had actually accrued, and the debt arose when the erroneous leave balance was reflected in the payment for accrued leave which the employee received when he was separated in June 1996.

### Background

The administrative record shows that the employee was employed at the Naval Air Station in Alameda, California, and that he was permitted to accrue annual leave in excess of 240 hours because Alameda was subject to closure.<sup>(1)</sup> The employee's leave and earnings statement (LES) for the last two pay periods in 1995 showed that he was credited with 175.3 BRAC leave hours, and the first LES for 1996 (pay period ending January 27, 1996) showed that he had 293.3 hours of BRAC leave (a January 1, 1995, balance of 175.3 BRAC hours plus 118 BRAC hours earned during 1995). However, for the pay period ending February 24, 1996, the employee's LES suddenly showed an increase in BRAC leave credit by an additional 118 hours, raising the balance from 293.3 hours to 411.3 hours. The employee was erroneously double-credited with 118 hours of BRAC leave for 1995. When he separated on June 30, 1996, he was compensated for 411.3 BRAC leave hours instead of 293.3 BRAC leave hours.

In this appeal, the employee contends that the Settlement Certificate was not based on the facts and that the conclusions are not supported by the record. He contends that the adjudicator merely assumed the facts in issue; namely, that he was overpaid for an erroneous credit of BRAC leave. He contends that he was properly paid, and alternatively, even if he was not, it was due to no fault of his own. Finally, the employee contends that the decisions relied upon in the Settlement Certificate involved employees who did not dispute the existence of a legal indebtedness. In support of his application for waiver, the employee stated that he had carefully monitored his pay statements and saw nothing wrong.

He also says that he questioned his supervisor about BRAC leave and suggests that he did not obtain satisfactory answers. He awaited an audit of his records in early 1996 as directed, and was verbally assured that everything was in proper order.

### **Discussion**

The employee suggests that he has a legal claim to 411.3 BRAC leave hours. Our authority in this matter extends only to the issue of waiver of the employee's debt. If the employee believes that he was legally entitled to 411.3 BRAC leave hours, he should pursue this through the appropriate channels.<sup>(2)</sup> For purposes of this decision we will assume that the debt is valid;<sup>(3)</sup> otherwise we cannot consider this matter.

Under 5 U.S.C. § 5584, we have the authority to waive collection of erroneous payments of pay or allowances to Department of Defense (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). The standard we employ to determine fault is whether a reasonably prudent person knew or should have known that he was receiving payments in excess of his entitlements.<sup>(4)</sup> 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). The employee does not acquire title to the excess payments merely because the government made an administrative error, and the employee has a duty to return the erroneous amounts to the government which resulted from the error when asked to do so. *See DOHA Claims Case No. 98040118, supra*; and *DOHA Claims Case No. 97082535, supra*. *See also Master Sergeant Haywood A. Helms, USAF, B-190565*, Mar. 22, 1978.

An employee has a duty to monitor his LES to verify accuracy. *See John P. Rieder, B-259199*, Feb. 22, 1995. In the present situation, the employee indicated that he had been checking the leave entries on his LESs. When he received 118 hours of BRAC leave in January 1996, and then an additional 118 hours of BRAC leave a month later, he should have at least suspected an error and brought it to the attention of the appropriate officials. He had a duty in that situation to question the credit of the additional 118 hours until the matter was settled by DFAS. When the accrued leave was paid to him at the termination of his service, the employee had a duty to retain the questionable part of the payment until he received a definitive explanation. Where an employee has records which indicate an overpayment and a reasonable person would have inquired into such a problem and taken corrective action, but the employee does not do so, then he is not free from fault under the standards for waiver and the erroneous overpayment may not be waived. *See Mark F. Jones, B-202136*, July 20, 1981.

A vague assurance by finance and management personnel at Alameda that his leave balance would be monitored, or that the balance was audited and was correct, was not sufficient to relieve the employee of the duty to question the credit of the additional 118 hours until he received a definitive answer concerning the validity of the credit. The member's waiver application is denied.

### **Conclusion**

We affirm the Settlement.

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. Annual leave accrued in excess of 240 hours was converted to BRAC leave at the end of each year.
2. Public Laws 104-53 and 104-316 transferred claims settlement authority and certain waiver approval authority from the Comptroller General to the Executive Branch. It is our understanding that appeals of employee annual leave disputes lies with the Office of Personnel Management after lodging such a claim with the responsible paying office (e.g., the Defense Finance and Accounting Service within the Department of Defense (DoD)).
3. The employee offered no evidence to support his claim that 411.3 BRAC hours or any amount other than the amount provided by DFAS (293.3 BRAC hours) was the correct amount of BRAC leave outstanding when his appointment was terminated on June 30, 1996. The employee's own leave and earnings statements support DFAS's position. Moreover, the burden is on the claimant to establish the liability of the United States. *See* 4 C.F.R. 31.7; *compare* DOHA Claims Case No. 96121102 (August 22, 1997), *aff'd* in DOHA Claims Case No. 97091101 (May 5, 1998).
4. This includes payment for accrued or BRAC leave.