

DATE: February 18, 1999

In Re:

[Redacted]

Claimant

)

Claims Case No. 98121616

CLAIMS APPEALS BOARD DECISION

DIGEST

When an employee is aware that he has received an overpayment, he does not acquire title to the excess amounts, and he has a duty to hold the money for eventual repayment. In such circumstances waiver is not proper under 5 U.S.C. § 5584.

DECISION

This is in response to an appeal of our August 6, 1998, Settlement Certificate, DOHA Claim No. 97091512, which sustained the Defense Finance and Accounting Office's (DFAS) denial of a Department of Defense (DoD) employee's application for waiver of a debt of \$1,460.76. The debt arose when the employee received an erroneous salary payment.

Background

The record indicates that the employee was converted from Wage Grade to General Schedule in June 1996. During the pay period ending August 17, 1996, he worked 40 regular hours and 12 hours overtime. His Leave and Earnings Statement (LES) indicates that he was paid \$564.90 for these hours. In addition, the LES indicates a retroactive payment of \$1,460.76, including regular pay for 37 hours, overtime pay for 75 hours, night differential pay for 63 hours, minus a deduction for 8 hours of Sunday premium pay.

When he received his payment for this pay period, the employee states that he thought that he was overpaid. In the absence of his supervisor, he brought his concern to the attention of a coworker. His coworker suggested that the additional payment covered the large amount of overtime the employee had worked recently.

Our Settlement Certificate agreed with DFAS's recommendation to deny the waiver because the employee was considered partially at fault under the waiver statute when he acknowledged that he was aware of the error and did not question his finance office. The Settlement Certificate pointed out that an employee's ability or inability to repay an overpayment is not a factor to be considered under the waiver statute.

On appeal, the employee provides copies of his LES for the pay period ending August 17, 1996, as well as his July 1996 LESs. He argues that he correctly completed his time sheets and should not suffer for the mistakes of others. Additionally, he notes that he has made several payments on his debt which have not been credited to his account.

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 he was receiving more than his entitlement. *See* DOHA Claims Case No. 98072904 (September 1, 1998); *George S. Winfield*, 66 Comp. Gen. 124 (1986). An individual who should have known or did in fact know that a payment was erroneous has a duty to make inquiries or bring the matter to the attention of the appropriate officials. The employee is at fault if he does otherwise. *See* Claims Case No. 97013104 (March 20, 1997). 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.

In the present case, the employee provides no explanation or evidence to suggest he anticipated a retroactive payment in mid-August 1996. On the contrary, he states that he thought he was overpaid during that pay period. We find that a reasonable person would attempt to verify with a finance officer the nature and amount of a payment such as this employee received. In particular, we note that for the last pay period in July 1996, in which he had worked a total of 123 hours, the employee received a net payment of \$1,015.38. For the pay period ending August 17, 1996, in which he worked a total of 52 hours, he received a net payment of \$1,167.78. The LES for August 17 explains the difference was a result of retroactive earnings, but there is no explanation of the why the adjustment was being made. His duty was to bring the matter to the attention of the appropriate officials. His coworker, even if this individual was in a temporary supervisory position, was not an appropriate official for financial matters. Under the waiver statute, the employee is considered partially at fault in accepting the overpayment.

An employee is not entitled to waiver as a matter of right whenever he receives an overpayment as a result of an administrative error. The employee received a payment which he knew was in excess of his entitlement and therefore did not acquire title to the excess amounts. *See* DOHA Claims Case No 98040110 (July 8, 1998). He has a duty to return them when asked to do so. Finally, as the Settlement Certificate indicates, a personal or family financial hardship is no basis for waiver. *See* DOHA Claims Case No. 97090809 (September 23, 1997).

Conclusion

We affirm the Settlement Certificate and note that DFAS acknowledges that the employee has made payments on the debt which must be credited to his account. [\(1\)](#)

_____/s/_____

Michael D. Hipple

Chairman, Claims Appeals Board

_____/s/_____

Christine M. Kopocis

Member, Claims Appeals Board

_____/s/_____

Jean E. Smallin

Member, Claims Appeals Board

1. In addition to deducting these payments, we recommend DFAS take note of the fact that the LESs submitted on appeal by the employee indicate that he was paid at the rate of a Wage Grade 6, step 1 for the pay period ending July 20 rather than as a General Schedule Grade 5, step 1. The correct salary due the employee for this pay period and the first pay period of August 1996 should be recalculated, and the employee's payments made in payment of his debt should be taken into account when determining the amount of the debt remaining.