

March 31, 1999

In Re:

[Redacted]

Claimant

)

Claims Case No. 99012606

CLAIMS APPEALS BOARD DECISION

DIGEST

When an employee is aware that she is receiving pay in excess of her entitlement, she does not acquire title to the excess amounts and has a duty to return them to the government when asked to do so. In such a situation, waiver under 5 U.S.C. § 5584 is not appropriate.

DECISION

This is in response to an appeal of DOHA's Settlement Certificate, DOHA Claim No. 98120717, December 10, 1998, which denied the request of a DoD employee for waiver of a debt which arose when her pay was set at the wrong level when she was transferred.

Background

The employee was transferred to Beale Air Force Base, California, effective June 25, 1995. At that time her pay was erroneously established at \$34,307 rather than the correct rate of \$31,944. As a result she was overpaid in the amount of \$1,128.80 between June 25, 1995, and December 23, 1995. The employee states that she became aware of the error on July 5, 1995, when she received a Notice of Personnel Action (SF-50) confirming her transfer. Besides stating the wrong salary, the SF-50 erroneously stated that she could retain a temporary pay grade of GS-9 for two years. She immediately reported the error to the proper authorities. A second SF-50 was issued six days after the first. It corrected the employee's salary, but incorrectly stated that she was entitled to retain a grade of GS-8 for two years. Another SF-50 was issued in September 1995, but the employee continued to be paid at the annual rate of \$34,307 until December 23, 1995, despite numerous attempts by the employee to correct the error and numerous assurances by the Defense Finance and Accounting Service that the error would be corrected promptly.

The employee contends that her debt should be waived because it arose from administrative error and because she did everything she could to correct the error. She points out that the error increased her tax liability for 1995 because it was not corrected before the end of the year, and that it prevented her spouse from receiving Social Security Disability Benefits to which he would otherwise have been entitled.

Discussion

Under 5 U.S.C. § 5584, we have the authority to waive collection of overpayments of pay and allowances 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. The fact that a debt arose due to administrative error does not entitle the employee to waiver if she does not otherwise meet the requirements for waiver as they are set forth in *Standards for Waiver*, 4 C.F.R. § 91.5(b) (1996). See *Master Sergeant Haywood A. Helms, USAF*, B-190565, Mar. 22, 1978. When an employee is aware that she is receiving amounts to which she is not entitled, she does not acquire title to the excess payments and should be prepared to return the excess amounts when asked to do so. In such a situation, waiver is not appropriate. See DOHA Claims Case No. 98040117 (July 8, 1998); and *Charles R.*

Ryon, Sr., B-234731, June 16, 1989.

In the case before us, the debt arose due to administrative error, and the employee acted properly in promptly bringing the error to the attention of the appropriate authorities and persistently pursuing correction. Those facts do not by themselves entitle the member to a waiver. *See Master Sergeant Haywood. A. Helms, USAF*, B-190565, Mar. 22, 1978, *supra*. Because the employee was aware that she was receiving pay in excess of her correct entitlement, she did not acquire title to the excess amounts and should have saved them for eventual repayment. In such a situation, waiver is not appropriate, because collection is not against equity and good conscience and is in the best interest of the United States. *See DOHA Claims Case No. 98040117, supra*; and *Charles R. Ryon, Sr.*, B-234731, *supra*.

With regard to the effect of the overpayments on the employee's tax refund, this Office and the Comptroller General have held that the application of the tax laws to an individual's income is solely within the jurisdiction of the taxing authority (for federal taxes, the Internal Revenue Service); the fact that overpayments may increase an employee's tax liability does not provide a basis for waiver. *See DOHA Claims Case No. 98040117 (July 8, 1998)*; and *Fort Polk Employees*, B-261699, Oct. 25, 1996.

An individual's entitlement to Social Security Disability Benefits is entirely within the jurisdiction of the Commissioner of Social Security. *See 42 U.S.C. § 405*, and *DOHA Claims Case No. 96103001 (April 21, 1997)*.⁽¹⁾ While it is unfortunate that the erroneous payments apparently affected the payment of Social Security to her spouse, that fact cannot provide a basis for waiver, since she does not meet the standards for waiver set forth in 4 C.F.R. § 91.5(b), *supra*.

Conclusion

We affirm the Settlement.

_____/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. If the employee has not contacted the Social Security Administration (SSA) regarding this situation, she should do so. Whether any adjustment in benefits is possible is of course solely within their jurisdiction.