

DATE: May 27, 1999

In Re:

[Redacted]

Claimant

)

Claims Case No. 99050610

CLAIMS APPEALS BOARD DECISION

DIGEST

A debt which arises due to reconciliation of an employee's Living Quarters Allowance (LQA) cannot be considered for waiver under 5 U.S.C. § 5584 if the LQA payments were proper when made.

DECISION

This is in response to an appeal of the Defense Office of Hearings and Appeals (DOHA) April 26, 1999, Settlement Certificate, DOHA Claim No. 99030802, which denied the request of a former DoD employee for waiver of a debt which arose because final calculation of her allowable housing expenses was less than the Living Quarters Allowance (LQA) she had received.

Background

The record indicates that the employee was entitled to living quarters allowance while employed overseas and that she retired in June 1994. In September 1994, a final calculation of her allowable housing expenses determined that the LQA she had received exceeded her allowable expenses by \$397.15. After offset of a previous payment of \$165.16, the net amount of the debt was \$231.99.

In the Fall of 1998, the government renewed its request for payment of the \$231.99 debt. The employee submitted a waiver request in October 1998. The Personnel Center of the Department of Defense Education Activity determined that because the waiver request was received more than three years after the date of discovery, the request failed to meet the conditions for consideration for waiver under 5 U.S.C. § 5584. Our Settlement Certificate upheld the denial.

On appeal, the employee acknowledges that her waiver request was not submitted within three years. She contends that she paid the debt by March 1995 and therefore was not aware that a debt remained on her record. Additionally, she contends that she was entitled to the \$231.99 and that she informed her finance office by telephone and by mail that she had remained in her apartment until June 15, 1994. Having been unsuccessful in having her debt eliminated from her record, and being in the process of moving, the employee states that in March 1995 she sent a money order in the amount of \$231.99 to her finance office in full payment of her debt. Not having heard more from the government about the debt after sending the payment, in the Spring of 1998 she destroyed her pay records, including a copy of the money order.

Discussion

Our authority in this matter is restricted to a consideration of whether the employee's debt may be waived under 5 U.S.C. § 5584. Under Section 5584 we may waive a claim for an erroneous overpayment of pay or allowances if collection would be against equity and good conscience and not in the best interest of the United States, provided there is no evidence of fraud, fault, misrepresentation, or lack of good faith on the part of the member. *See also* Standards for

Waiver, 4 C.F.R. § 91.5(b) (1996).

In this case, the employee was not erroneously overpaid. The debt before us involves LQA, payment of which is governed by 5 U.S.C. §§ 5922-5923 and by implementing regulations issued by the Department of State.⁽¹⁾ Under 5 U.S.C. § 5922(b), LQA may be paid in advance, and this statute anticipates that periodically a reconciliation is performed after which the employee is required to repay the amount by which the amount she received exceeds her allowable expenses. The disbursing official's duty is to advance sums that he/she considers "advisable" in consideration of the employee's need, thereafter recovering any advances not subsequently covered by allowances. Thus, we have held that 5 U.S.C. § 5584 generally does not apply to excess advances of LQA because there is no indication the LQA payment was erroneous. *See* DOHA Claims Case No. 99012605 (February 3, 1999); DOHA Claims Case No. 97111908 (January 9, 1998).⁽²⁾ By definition, a payment must be erroneous when made if it is to be considered for waiver under 5 U.S.C. § 5584. *See* B-270306, Dec. 3, 1996.

For purposes of clarification, as was stated in the Settlement Certificate, an employee must request waiver within three years after the overpayment is discovered by the government. *See* 5 U.S.C. 5584(b)(3). The record before us indicates that the debt was discovered in September 1994. The employee filed a waiver request in October 1998. Therefore, her application would not have been timely even if the payment had been erroneous. *See* 54 Comp. Gen. 133 (1974).

The employee argues that she was entitled to the \$231.99 LQA she received for the period through June 15, 1994, when she vacated her residence overseas. DOHA does not have authority to determine the accuracy of LQA calculations. The Director of the Office of Personnel Management (OPM) settles claims involving Federal civilian employees' compensation and leave. *See* 31 U.S.C. § 3702(a)(2). LQA is considered "compensation" for this purpose.⁽³⁾ Alternatively, under 5 U.S.C. § 5922(b) the head of the agency involved may waive the excess amount under regulations of the President, which are issued by the Department of State. We note that the Standardized Regulations cited in footnote 1 above indicate that LQA is paid during the summer recess for teachers who are returning to teach in the fall. If they are not returning, LQA apparently ends at the end of the school year. *See* Standardized Regulations, paragraph 723.1. The employee may pursue her claim under 31 U.S.C. § 3702 with OPM or seek a waiver under 5 U.S.C. § 5922 with the Department of Defense Education Activity.

Conclusion

We affirm the Settlement Certificate.

_____/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. See the Department of State's Standardized Regulations for civilian employees living overseas. A current version is posted at www.state.gov/www/perdiems/dssr/regs000.html. See also State Department Standardized Regulations at Appendix I of Volume 2 of the Joint Travel Regulations (JTR). Current versions of the JTR are obtainable through www.perdiem.osd.mil.

2. For clarification purposes, we note that these cases are cited for the legal principle involved. The factual information, including timeframes and dollar amounts, differ from the facts of this particular case, but the legal premise is equally applicable.
3. The Office of General Counsel within OPM exercises the Director's settlement authority, and it has posted applicable procedural rules through www.opm.gov/decision.