
In Re:

[Redacted]

Claimant

)

April 15, 1999

Claims Case No. 99040514

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

A Department of Defense employee formerly stationed in Europe appeals the March 23, 1999, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 98121403, which partially denied the employee's request for waiver of an indebtedness of \$2,772.03. This debt resulted from the miscalculation and erroneous overpayment of the employee's living quarters allowance (LQA) during the period December 27, 1992, through July 24, 1993. [\(1\)](#)

Background

The record shows that the employee generally received LQA in the bi-weekly amount of \$602.14. The proper amount of LQA was between \$502.60 and \$505.68 for each pay period. But, during the pay period ending May 29, 1993, the employee suddenly received a payment of \$2,559.06, or \$2,053.38 in excess of his proper entitlement of \$505.68. There was no change in the employee's entitlement, and the Settlement Certificate noted that he should have questioned the validity of this payment.

On appeal, the employee points out that he did question the payment. He states that he worked in the same local telephone area as the finance office and that he called several times in an effort to determine what was going on. Each time he called, the employee was told not to call again and that the matter would be "taken care of automatically."

Discussion

For purposes of this appeal, we will assume that the employee suspected an error and that he tried to verify his entitlement, as he explains.

Under 5 U.S.C. § 5584, DOHA has the authority to waive collection of erroneous overpayments of pay or allowances to 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. Our decisions indicate that waiver is not appropriate when the employee is or should be aware that he is being overpaid. *See DOHA Claims Case No. 98040118* (July 6, 1998); and *Philip W. McNany*, B-198770, Nov. 13, 1980.

In this case, the employee admittedly suspected an error. He tried to verify his entitlement, but the only assurance he received was a verbal assurance suggesting that if a problem existed, the finance center eventually would identify it and

make a proper adjustment. Thus, the employee was on notice that the payment might have been erroneous and that at some point he might have to refund part of it. The employee does not acquire title to an erroneous payment merely because there was an administrative error and the employee notified appropriate officials of the suspected error. He should have held the excess amounts for eventual repayment. *Compare* DOHA Claims Case No. 98040118, *supra*.

Conclusion

We affirm the Settlement Certificate.

Signed: Michael D. Hipple

Michael D. Hipple

Chairman, Claims Appeals Board

Signed: Carol A. Marchant

Carol A. Marchant

Member, Claims Appeals Board

Signed: Jean E. Smallin

Jean E. Smallin

Member, Claims Appeals Board

1. The Settlement Certificate waived collection of \$718.65 but denied waiver of \$2,053.38. The latter amount involved miscalculation during the period May 16, 1993, through May 29, 1993. The waiver of the first amount is not in dispute.