

DATE: June 30, 1999

In Re:

[Redacted]

Claimant

)

Claims Case No. 99061401

CLAIMS APPEALS BOARD DECISION

DIGEST

An employee's waiver request is denied where the record indicates that she received two salary payments for a pay period. The employee is considered partially at fault under the waiver statute for not having questioned her entitlement to the payments. Her mere contention that she expected a salary check from a new assignment at the time is insufficient to provide for waiver of the debt.

DECISION

This is in response to an appeal of the Defense Office of Hearings and Appeals (DOHA) May 20, 1999, Settlement Certificate, DOHA Claim No. 99040703, which denied the request of a former DoD employee for waiver of a debt of \$632.60 which arose from an erroneous salary payment.

Background

The record indicates that the employee received a temporary appointment to a new office in Germany in 1996. The Defense Finance and Accounting Service (DFAS) determined in 1998 that the employee received duplicate salary payments for the pay period ending August 31, 1996. The employee has stated that she was not aware of the duplicate payments and had suspected that she was underpaid by a paycheck. She contends that she had great difficulty following up on her suspicion and was eventually provided a form to complete to request a debt waiver. She accepted the advice of a finance official and paid the debt in full at the time she completed a second waiver request. [\(1\)](#)

Our Settlement Certificate agreed with DFAS's determination that the waiver request should be denied. We stated that the employee should have questioned her entitlement to receive two salary payments for the same period.

On appeal, the employee contends that only one salary check was sent and that she did not receive "duplicate salary payments". She believed that the check in question was the first check from her new job because it was received on the date a payroll officer had informed her to expect such a check. She points out that the finance office issuing her paychecks was the same for both of her positions. In addition, the employee takes exception to the tone of the Settlement Certificate and the fact that she is made responsible for the accounting error. She asserts that she should be refunded the money she paid with interest.

Discussion

Under 5 U.S.C. § 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. The standard we employ to determine fault is that of a reasonable person; if such a person knows or should know that she is receiving money to which she is not entitled, she is at fault if she fails to bring the excess payment to the attention of the appropriate authorities. In such

a situation, waiver is precluded. *See also Standards for Waiver*, 4 C.F.R. § 91.5(b) (1996). By itself, the fact that a payment arose due to administrative error does not entitle an employee or former employee to waiver if she does not otherwise meet the standards set forth in 4 C.F.R. 91.5(b), *supra*. *See* DOHA Claims Case No. 99012606 (March 31, 1999).

This Office bases decisions on the written record. In addition, where there is a factual dispute, we will accept the findings of fact of the administrative report absent clear and convincing contrary evidence. *See* Claims Case No. 98062401 (October 13, 1998); 57 Comp. Gen. 415 (1978) and cases cited therein. In this case, the employee states that she was not aware of the duplicate payments. She contends that she believed the check she received was the first pay check from her new job. Her statement alone was submitted. DFAS found that two payments of different amounts were issued to the employee for the pay period ending August 31, and that one of these payments was correct and the other was a duplicate salary payment for which her salary had been incorrectly computed. The employee provides no evidence that she did not receive two payments for the same period. On the contrary, she contends that she believed the check received was for salary at her new job assignment. She provides no evidence that she reasonably expected two payments at this time, or that if she had expected two payments they should have been for differing amounts. We believe that a reasonable person who, having started a temporary appointment at the same grade and step, received two payments for the same pay period would ensure she had proper paperwork to explain the payments or would question an appropriate official as to her entitlement to these payments. The employee is at fault if she fails to do so. ⁽²⁾ *See* DOHA Claims Case No. 97012135 (June 13, 1997).

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. According to the employee, she completed a waiver request form upon arrival at her new job assignment. She was later informed that she needed to complete another form because the first form was incomplete.

2. The legal definition of "fault" in waiver decisions does not imply any ethical lapse on the part of the employee or member. It merely indicates the she is not entirely without responsibility for any resulting overpayment and that therefore the equitable remedy of waiver is not available to her.