

The Deputy General Counsel (Fiscal), Department of Defense, affirmed this decision on December 12, 2000.

In Re:

[Redacted]

Claimant

DATE: December 8, 1999

Claims Case No. 99111916

CLAIMS APPEALS BOARD DECISION

DIGEST

The waiver of an employee's debt for the erroneous overpayment of pay and allowances under 5 U.S.C. § 5584 is not appropriate when the employee is aware or should be aware that she is receiving payments that may exceed her entitlements. The employee does not acquire title to any excess payments merely because the government committed administrative error, and she has the duty to hold the payments until she is requested to repay the excess amount or until the propriety of the payments are established. In such a situation, waiver is not appropriate.

DECISION

A Department of the Army employee appeals the Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 99091501, November 5, 1999, which affirmed the Defense Finance and Accounting Service's (DFAS) denial of waiver for the erroneous overpayment of pay and allowances. [\(1\)](#)

Background

The record indicates that the erroneous overpayment occurred incident to the reassignment of the employee from Korea to Fort Dix, New Jersey, effective October 11, 1998. Due to an administrative error, the employee erroneously received

salary payments from both the losing and gaining payroll offices for the pay period ending October 24, 1998. (2) The excess payments were deposited to the employee's bank by direct deposit. The employee acknowledges that the erroneous amounts were deposited into her account, but she contends that she should not be held liable for the government's error. She did not receive a pay voucher for this pay period, and she was not provided any other specific information related to the deposits around the time of her transfer until February 1999. The employee indicates that she was not provided a full accounting of her entitlements until she lodged a complaint with the Inspector General. In her waiver application, the employee also indicates that she expected a 1998 Living Quarters Allowance (LQA) payment, a closeout LQA payment, and Temporary Quarters Subsistence Allowance (TQSA) payments.

Decision

Under 5 U.S.C. § 5584, we have the authority to waive collection of erroneous payments of pay and certain allowances made to federal employees, if collection would be against equity and good conscience and not in the best interest of the United States. Generally these criteria are met by a finding that the claim arose from administrative error with no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee or any other person having an interest in obtaining the waiver. *See* 5 U.S.C. § 5584(b)(1) and the *Standards for Waiver*, 4 C.F.R. § 91.5(b) (1996). The standard employed to determine whether a member was at "fault" in accepting an overpayment is whether, under the particular circumstances involved, a reasonable person would have been aware that he was receiving more than his entitlement and made inquiries or brought the matter to the attention of the appropriate officials.

In the present case, the erroneous payment was made as a result of administrative error and there is no indication of fraud, misrepresentation or lack of good faith on the employee's part. However, the fact that the employee has pay sent directly to a bank does not relieve her of responsibility of verifying her bank statement and questioning any discrepancies. *See* DOHA Claims Case No. 97011408 (June 10, 1997). It is unfortunate that the employee had to seek assistance from the Inspector General in order to obtain an accounting of her entitlements, but she knew that there was a degree of uncertainty concerning the total amount she was receiving. We can assume that she reasonably should have expected to receive normal salary during the pay period ending October 24, 1998, but there is nothing in the record demonstrating that she reasonably believed that she was entitled to each other payment received around the time of her transfer in the specific dollar amount received. When an employee is aware that she is receiving an erroneous or questionable payment, she does not acquire title to any excess amount. Waiver is inappropriate. *See* DOHA Claims Case No. 99071602 (September 10, 1999); and DOHA Claims Case No. 99033117 (April 15, 1999).

Conclusion

We affirm the Settlement Certificate.

Signed: Michael D. Hipple

Michael D. Hipple

Chairman, Claims Appeals Board

Signed: Christine M. Kopocis

Christine M. Kopocis

Member, Claims Appeals Board

Signed: Jean E. Smallin

Jean E. Smallin

Member, Claims Appeals Board

1. The amount initially considered by DFAS was \$1,528.92, but upon further development, our Office determined that the amount of erroneous overpayment was actually \$1,711.22.
2. The overpayment involved 80 hours of salary at \$18.13 per hour, plus an excessive separate maintenance allowance of \$260.82.