

DATE: January 8, 2018

In Re:)
 [REDACTED]) Claims Case No. 2016-WV-120501.2
)
Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Under 5 U.S.C. § 5584, the Defense Office of Hearings and Appeals (DOHA) has the authority to waive a claim for repayment of erroneous payments of pay and certain allowances made to specified federal employees, if collection of the claim would be against equity and good conscience and not in the best interests of the United States, provided that there is no evidence of fraud, fault, misrepresentation or lack of good faith on the part of the employee.

DECISION

A former employee of the U.S. Air Force requests reconsideration of the decision of the Defense Office of Hearings and Appeals in DOHA Claim No. 2016-WV-120501, dated November 20, 2017. In that decision, DOHA waived in part the collection of a debt owed by the employee. The employee seeks waiver of the remaining indebtedness.

Background

Effective March 2, 2014, the employee, an Air Commander, GS-15, step 10 (\$157,100.00 per annum) was reassigned from March Air Reserve Base (ARB), California, to Dobbins ARB, Georgia, at a rate of a GS-15, step 10 (\$162,177.00 per annum).¹ On July 22, 2014, a SF-50 reassigned the employee from Dobbins ARB to Robins Air Force Base (AFB), Georgia. However, due to an administrative error, the SF-50 effecting the reassignment reflected that the employee's duty station was Denver, Colorado, instead of Robins AFB. It was later determined that at the time of the employee's transfer from March ARB to Dobbins ARB, his salary should

¹The employee's salary was originally set on reassignment as \$156,043.00. However, a *Notification of Personnel Action*, SF-50, was issued on March 2, 2014, setting his salary as \$162,177.00 per annum.

have been \$156,043.00 per annum, instead of \$162,177.00 per annum. Due to these administrative errors, the employee was overpaid salary in the amount of \$6,703.20 during the period March 2, 2014, through April 4, 2015. In addition, the employee erroneously received a retroactive payment in the amount of \$5,692.80 during the pay period ending April 4, 2015, for salary for the period July 27, 2014, through January 10, 2015. Therefore, the employee was overpaid \$12,396.00 (\$6,703.20 + \$5,692.80).

In DOHA Claim No. 2016-WV-120501, the adjudicator waived \$2,469.60, the portion of the overpayment due to the employee's salary being miscalculated during the period March 2, 2014, through July 26, 2014. However, the adjudicator denied waiver of \$4,233.60, the portion of the overpayment resulting from the employee's salary being miscalculated during the period July 27, 2014, through April 4, 2015; and \$5,692.80, the portion of the overpayment resulting from the employee erroneously receiving a retroactive payment in the pay period ending April 4, 2015. Therefore, the adjudicator denied waiver in the total amount of \$9,926.40 (\$4,233.60 + \$5,692.80). The adjudicator found that since the employee received leave and earnings statements (LEs) during the period of overpayment, he should have questioned why his locality pay increased from 19.29% of his annual salary to 22.52% of his annual salary in the pay period ending August 9, 2014. In addition, the employee should have questioned his entitlement to the retroactive payment he received in the pay period ending April 4, 2015.

In his request for reconsideration, the employee states that he is not a pay expert. He states that he is unable to input any of his own data into the pay system. He states that he expected his pay to be correct. In addition, he states that the waiver process has taken over three years.

Discussion

The employee seeks waiver of the debt under 5 U.S.C. § 5584. This statute is implemented within the Department of Defense under Department of Defense Instruction (Instruction) 1340.23 (February 14, 2006). Under 5 U.S.C. § 5584, we have the authority to waive collection of erroneous payments of pay and allowances, provided there is no indication of fraud, misrepresentation, fault or lack of good faith on the part of the employee. The fact that an erroneous payment is solely the result of an administrative error or mistake on the part of the government is not sufficient basis in and of itself for granting waiver. *See* Instruction ¶ E4.1.3. Waiver is not appropriate when an employee knows, or reasonably should know, that a payment is erroneous. The employee has a duty to notify an appropriate official and to set aside the funds for eventual repayment to the government. *See* Instruction ¶ E4.1.4. Under circumstances in which an employee has records which, if reviewed, would indicate an overpayment, and the employee fails to review such documentation for accuracy or otherwise fails to take corrective action, he is not without fault and waiver will be denied. *See* DOHA Claims Case No. 2014-WV-090207.2 (June 11, 2015); and DOHA Claims Case No. 2014-WV-090505.2 (April 20, 2015).

In this case, the employee acknowledges that he received LEs prior to and during the period of overpayment. His LE for the period July 27, 2014, through August 9, 2014, reflects

that his locality pay rate increased to 22.52% from 19.29%. Additionally, the SF-50 issued on July 22, 2014, reflects his duty station as Denver, Colorado, and not Robbins AFB. Therefore, a review of his LES and his SF-50 should have prompted the employee to question why his locality rate increased and why his SF50 reflected his duty station as Denver when he was stationed at Robbins AFB. Further, as the adjudicator found, there is no indication that the employee questioned his entitlement to the retroactive payment he received in the pay period ending April 4, 2015. Since the employee failed to do so, waiver is not appropriate. *See* DOHA Claims Case No. 2017-WV-030703.2 (July 31, 2017); and DOHA Claims Case No. 2013-WV-122603.2 (December 16, 2014).

Although it has been three years since the employee initially applied for waiver of the debt, this does not change the fact that at the time of the overpayment, the employee had information at his disposal in the form of LESs and SF-50s reflecting an error in his pay records. We also note that at the time of the overpayment, the employee had been employed by the federal government since 1984 and should have recognized the importance of being paid for the locality of the correct duty station. *See* DOHA Claims Case No. 2014-WV-090505.2, *supra*.

Conclusion

The employee's request for relief is denied, and we affirm the November 20, 2017, decision to deny waiver in the amount of \$9,926.40. In accordance with Instruction ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

SIGNED: Catherine M. Engstrom

Catherine M. Engstrom
Chairman, Claims Appeals Board

SIGNED: Charles C. Hale

Charles C. Hale
Member, Claims Appeals Board

SIGNED: Ray T. Blank, Jr.

Ray T. Blank, Jr.
Member, Claims Appeals Board