

DATE: May 23, 2002

In Re:

[Redacted]

Claimant

Claims Case No. 02050613

CLAIMS APPEALS BOARD DECISION

DIGEST

When an employee is aware or should be aware that he is receiving payments in excess of his entitlements, he does not acquire title to the excess amounts and has a duty to hold them for eventual repayment.

DECISION

A former Department of the Army employee appeals the April 10, 2002, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 02031909, affirming the denial of the employee's application for a waiver of indebtedness by the Defense Finance and Accounting Service (DFAS) in connection with the erroneous overpayment of civilian salary.

Background

The record shows that the employee, a computer specialist, GS-11, step 3, received a temporary promotion to a GS-12, step 1, for a period not to exceed June 20, 1999. In preparation for a transfer to Korea, on August 25, 1998, the employee was returned to the grade of GS-11, step 3. The member was transferred to Korea effective August 27, 1998. However, due to administrative error, upon arrival in Korea, his salary was erroneously established as a GS-11, step 7, instead of GS-11, step 3. As a result, the employee was overpaid \$4,222.66 during the period August 27, 1998, through July 17, 1999.

The employee appeals on several bases. First, he notes that he did nothing wrong on his part and that he was not guilty of fraud or misrepresentation. The erroneous overpayments occurred due to administrative error. He admits that he did not check his leave and earnings statements (LES), but at the time, he says that he was not living from pay check to pay check and did not feel the need to verify their accuracy.

The employee cites several errors in the Settlement Certificate. He says that he was wrongly accused of notifying the personnel department that there was a problem with his pay. In fact, the employee notes that he did not notify anyone of an error because he was unaware of any error until his supervisor told him to call the personnel office because someone there had called the supervisor to advise him that there was an error in the employee's pay. When the employee called, he was advised that he had been overpaid for his grade and that DFAS would set up payments to recover the money. In correspondence to his Congressional representative, the employee noted that when he in-processed in Korea, he had advised the clerk that he had a temporary promotion to GS-12 prior to his transfer, and that his pay had to be set to GS-11, step 3. He says that the clerk failed to use the information he provided to her.

Additionally, the employee notes that DOHA was in error in stating that he was overpaid from August 1997 through July 17, 1999, when in fact he was not transferred to Korea until 1998.

The employee notes that his appeal is motivated by a difficult financial situation that developed since he incurred the debt. Other correspondence indicates that the financial situation was aggravated by family tragedy.

Discussion

Preliminarily, we confirm that the overpayment was \$4,222.66, extending from the pay periods ending (PPE) September 12, 1998, the pay period that began on August 29, 1998, through the PPE July 17, 1999.⁽¹⁾ Also, we accept for purposes of this appeal the employee's statement he did not notify anyone that there was a problem with his pay because he did not realize that there was one until his supervisor advised him to call the personnel office.

Under 5 U.S.C. § 5584, we may waive collection of a claim for the erroneous overpayment of pay and allowances against an employee if collection would be against equity and good conscience and is not in the best interest of the United States, provided there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee. *See also Standards for Waiver*, 4 C.F.R. § 91.5 (1996). In the present case the erroneous salary overpayments were made as a result of administrative errors and there is no indication of fraud, misrepresentation, or lack of good faith on the employee's part. However, an employee is at least partially at fault, and waiver is precluded when, in light of all of the circumstances, it is determined that he should have known that an error existed and taken steps to have it corrected. The standard we employ is whether a reasonable person should have suspected that he was receiving payments in excess of his entitlement. *See DOHA Claims Case No. 97062629* (July 17, 1997). An employee is not entitled to waiver as a matter of right merely because he was erroneously overpaid due to administrative error. *See DOHA Claims Case No. 02030503* (March 14, 2002); and *DOHA Claims Case No. 01092001* (October 29, 2001).

In the present case, the employee received LESs that indicated that he was being paid as a GS-11, step 7 instead of a GS-11, step 3. The employee admits that he knew that his proper salary was GS-11, step 3. Our decisions and those of the Comptroller General indicate that waiver is not appropriate, and the employee is partially at fault, when he has records which would indicate an overpayment and fails to review such documents for accuracy or otherwise fails to take corrective action. *See* DOHA Claims Case No. 98112018 (January 11, 1999), *aff'd* by the Deputy General Counsel (Fiscal) on April 4, 2001; and Comptroller General decision B-252973, Sept. 23, 1993. The later decision clearly indicates that an employee has a duty to identify erroneous step information on his LES and a duty to inquire as to the accuracy of his pay in such situations. The employee does not acquire title to the excess payment merely because an administrative error occurred and has a duty to return the excess amount when asked to do so. *See* DOHA Claims Case No. 98112018, *supra*, citing B-190565, Mar. 22, 1978.

For purposes of this appeal, we acknowledge that the employee may now be in significant financial hardship. But, financial hardship is not a basis on which we can grant waiver. *See* DOHA Claims Case No. 99070513 (August 16, 1999); DOHA Claims Case No. 97090809 (September 23, 1997); and B-259660, June 8, 1995. DFAS may take the employee's hardship into consideration in determining an appropriate repayment plan.

Conclusion

Except as noted above, 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

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Member, Claims Appeals Board

1. The December 20, 1999, letter to the employee from DFAS Charleston specified these pay periods and the gross amount of \$4,222.66. It also noted a step increase effective PPE April 24, 1999. The official DFAS administrative report from DFAS Denver confirmed the same gross amount and pay periods. The reference in the Settlement Certificate to 1997 was a typographical error.