

DATE: April 4, 2007

In Re:

[REDACTED]

Claimant

)

Claims Case No. 07040209

CLAIMS APPEALS BOARD

RECONSIDERATION DECISION

DIGEST

Waiver of a debt under 5 U.S.C. § 5584 is not appropriate when the employee knows or should be aware that she was receiving pay to which she was not entitled.

DECISION

A former Air Force employee requests reconsideration of the February 28, 2007, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 07022603. In that decision, DOHA waived \$594.60 of the government's \$1,783.80 claim against her for the overpayment of salary. DOHA denied waiver of the remaining \$1,189.20 of the debt. The employee seeks waiver of the entire indebtedness.

Background

The record indicates that the employee resigned from the Air Force on July 11, 2006, and at that time was entitled to 16 hours of salary and four hours of lump sum leave, totaling \$198.20 (20 hours X \$9.91 per hour). However, due to administrative error, the employee actually received salary for 80 hours during the pay period July 9, 2006, through July 22, 2006, and therefore, was overpaid \$594.60 (60 hours X \$9.91). DOHA waived this overpayment, and it is not in consideration here.

The record also shows that the employee also received 80 hours of salary for the pay period ending August 5, 2006, and 40 hours for the pay period ending August 19, 2006, resulting in an additional overpayment of \$1,189.20 (120 hours X \$9.91). In her reconsideration request, the employee argues that she was a summer employee who was unfamiliar with the "inter workings of the government pay system" and that this "placed her at a distinct disadvantage as [she] relied upon seasoned government employees, and time keepers to ensure that proper payments and deductions were taken from wages earned." The employee also contends that she

is a full-time college student and is not in a financial position to repay the debt.

Discussion

The standards for waiver determinations are set forth in Enclosure 4 to Department of Defense Instruction (Instruction) 1340.23 (February 14, 2006). Generally, persons who receive a payment erroneously from the Government acquire no right to the money. They are bound in equity and good conscience to make restitution. If a benefit is bestowed by mistake, no matter how careless the act of the Government may have been, the recipient must make restitution. In theory, restitution results in no loss to the recipient because the recipient received something for nothing. *See* Instruction at ¶ E4.1.1. However, we have authority to grant waiver to an employee under 5 U.S.C. § 5584 if collection would be

against equity and good conscience and 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* Instruction at ¶ E4.1.2. A waiver is not a matter of right. It is available to provide relief as a matter of equity, if the circumstances warrant. *See* Instruction at ¶ E4.1.1.

The fact that an erroneous payment is solely the result of administrative error or

mistake on the part of the Government is not a sufficient basis in and of itself for granting a waiver. A waiver usually is not appropriate when a recipient knows, or reasonably should know, that a payment is erroneous. The recipient has a duty to notify an appropriate official and to set aside the funds for eventual repayment to the Government, even if the Government fails to act after such notification. *See* Instruction at ¶¶ E4.1.3 and E4.1.4.

A waiver generally is not appropriate when a recipient of a significant unexplained increase in pay or allowances, or of any other unexplained payment of pay or allowances, does not attempt to obtain a reasonable explanation from an appropriate official. The recipient has a duty to ascertain the reason for the payment and to set aside the funds in the event that repayment should be necessary. Financial hardship is not a factor for consideration in determining whether a waiver is appropriate. *See* Instruction at ¶¶ E4.1.5 through E4.1.7; DOHA Claims Case No. 02072501 (August 7, 2002).

We agree with the employee that the government erred in paying her during the pay periods after she resigned; however, this does not mean that the employee is entitled to waiver relief. Considering her experience, the adjudicator gave this employee the benefit of the doubt during the final pay period in which she worked. But the record does not suggest that the employee had any reasonable expectation that she would continue to receive her salary payments weeks after she resigned. The adjudicator had a reasonable basis for finding that the employee knew or had reason to know that she was receiving salary payments in excess of her entitlement and that she should have made prompt inquiry of an appropriate official concerning these payments. The adjudicator properly concluded that collection of the \$1,189.20 overpayment would not be against equity and good conscience, nor would it be contrary to the best interests of the United States.

As indicated above, financial hardship is not a proper basis for waiver relief. The employee may inquire from the Defense Finance and Accounting Service (DFAS), the agency with authority over collections, regarding the possibility of a repayment plan. DFAS can also address any concern the member may have about the calculation of the \$1,189.20 portion of the debt.

Conclusion

The member's request for relief is denied, and we affirm the February 28, 2007, appeal decision to deny waiver in the amount of \$1,189.20. In accordance with paragraph E8.15 of the Instruction, this is the final administrative action of the Department of Defense in this matter.

Signed: Michael D. Hipple

Michael D. Hipple

Chairman, Claims Appeals Board

Signed: Jean E. Smallin

Jean E. Smallin

Member, Claims Appeals Board

Signed: Catherine M. Engstrom

Catherine M. Engstrom

Member, Claims Appeals Board