



DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS



DATE: May 29, 2026

In Re:)	
[REDACTED])	
Claimant)	Claims Case No. 2016-WV-120105.3
)	

**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 interest of the United States, provided there is no evidence of fraud, fault, misrepresentation, or lack of good faith on the part of the employee.

When an employee is aware or reasonably 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. In such a case, waiver under 5 U.S.C. § 5584 is not appropriate.

DECISION

An employee of the U.S. Air Force requests reconsideration of the decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2016-WV-120105.2, dated August 28, 2025. In that decision, DOHA denied waiver of the government’s claim in the amount of \$84,662.92.

Background

The record reflects that the employee was in a non-appropriated fund (NAF) position with the Air Force. On April 24, 2006, the employee accepted a tentative job offer for a position in the general schedule as a GS-13, step 3, at the rate of \$41.39 per hour (\$86,381.00 per annum). On April 26, 2006, the employee was provided with a revised tentative job offer as a GS-13, step 10, at the rate of \$85,578.00 per annum, which he accepted. However, on August 14, 2006, the employee was issued a *Notification of Personnel Action* (SF-50), granting him a career appointment as a GS-13, step 00, at the rate of \$86,381.00 per annum, effective August 3, 2006. It was later determined that his grade should have been established as a GS-13, step 6, at the rate of \$76,802.00 per annum upon his career appointment. On

January 8, 2007, the Department of the Air Force sent the employee an implementation memorandum under the National Security Personnel System (NSPS) which set his broadband level at YC-1101-02, at the rate of \$87,112.00 per annum. As a result of the error in the establishment of his initial salary, during the period August 3, 2006, through March 22, 2014, the employee was overpaid in the amount of \$84,662.92.

On October 28, 2014, the employee submitted a DD Form 2789, *Waiver/Remission of Indebtedness Application*, to the Defense Finance and Accounting Service (DFAS). On that form in answer to the block 14, "Reason for requesting waiver/remission and why you feel it should be approved," the employee answered by stating that due to the Air Force's negligence, he accepted the revised tentative job offer dated April 26, 2006, which lowered his salary from the first tentative job offer, and it was not until almost eight years later that the Air Force notified him that the salary represented on the revised tentative job offer was also in error. On April 30, 2025, DFAS recommended that DOHA deny waiver the portion of the overpayment the employee received during the period August 3, 2006, through January 20, 2007, based on the fact that the employee received salary contrary to the salary reflected on the revised tentative job offer dated April 26, 2006. DFAS further recommended that DOHA waive the portion of the overpayment the employee received during the period January 21, 2007, through January 25, 2014, based on the fact that the employee received a memorandum on January 8, 2007, increasing his salary to \$87,112.00 per annum. Finally, DFAS recommended denial of the overpayment the employee received during the period January 26, 2014, through March 22, 2014, because the employee was notified of the error with his salary in an email dated February 4, 2014.

In the DOHA decision dated August 28, 2025, the adjudicator declined to follow DFAS's recommendation of partial waiver of the employee's debt and denied waiver in full. The adjudicator found that since the employee accepted employment at the rate of \$85,578.00 per annum, he was aware or reasonably should have been aware that his salary was incorrect. The adjudicator determined that based on the pay documentation the employee received, his SF-50s and leave and earning statements (LES), he should have immediately questioned why he was receiving salary at the rate of \$86,381.00 per annum. The adjudicator also cited to the employee's acknowledgement in his request for waiver dated October 28, 2014, that he accepted the offer for salary as a GS-13, step 10, in the amount of \$85,578.00 per annum, after his salary was lowered from \$86,381.00 per annum. The adjudicator found that since the employee stated he was aware that he accepted the lower salary offered on April 26, 2006, he should have contacted the proper officials regarding his salary discrepancy in August 2006 when he received his SF-50 reflecting the higher salary. The adjudicator determined that even though the employee received a memorandum in January 2007 reflecting his salary as \$87,112.00 per annum, that salary was derived from an adjustment based on the erroneous rate of \$86,381.00 per annum. The adjudicator stated that if the employee had immediately questioned the initial error in August 2006, the matter presumably would have been corrected, and the perpetuation of the error could have been prevented.

In his request for reconsideration, the employee states that as a NAF employee, he did not receive locality pay. When he accepted the revised tentative job offer on April 26, 2006, he believed that it aligned with the 2006 General Schedule Pay Table (without locality pay) for a GS-13, step 10, at a rate of \$85,578.00 per annum. He states that he did not receive his SF-50 until August 14, 2006. He states that after receiving his SF-50, he met with the Air Force Personnel Center (AFPC) staff and identified an error in the spelling of his name. He states that unfortunately both the AFPC staff and he overlooked the administrative error in regard to his pay rate. He attaches the SF-50 dated September 14, 2006, that reflects his corrected name but still contains the incorrect salary rate. He states that since he had awareness of the original pay-setting error, he agrees he should be accountable for this portion of the debt. However, he seeks relief for the remainder of the debt stemming from a mistake made by a Human Resources specialist who should have established his salary as a GS-13, step 6, at the rate of \$76,802.00 per annum upon his career appointment.

Discussion

Under 5 U.S.C. § 5584, we have the authority to waive collection of erroneous payments of pay and allowances if collection would be against equity and good conscience and not in the best interests of the United States, provided there is no evidence of fraud, fault, misrepresentation, or lack of good faith on the part of the employee. *See* Department of Defense Instruction (Instruction) 1340.23 (February 14, 2006). The fact that an erroneous payment is made as a result of administrative error on the part of the government is not a sufficient basis in and of itself for granting a waiver. *See* Instruction ¶ E4.1.1. It is well-established that waiver is not appropriate in cases where the employee is provided information such as an SF-50 which contains sufficient information to indicate the existence of an error but fails to question his salary. *See* DOHA Claims Case No. 2020-WV-021101.2 (August 18, 2020); DOHA Claims Case No. 09032306 (April 15, 2009); and DOHA Claims Case No.07100101 (October 11, 2007). Once an employee receives the information which reasonably suggests that the validity of the payments may be in issue, he should set aside the funds for eventual repayment to the government. *See* DOHA Claims Case No. 07100101, *supra*.

In this case, the employee acknowledges that he was offered and he accepted employment for the position at the rate of \$85,578.00 per annum and that subsequent SF-50s he received reflected a discrepancy, the higher rate of salary. Since the employee failed to question the pay information he was given, waiver is not appropriate. As pointed out by the DOHA adjudicator, if the employee had questioned his salary at that time, presumably it would have been corrected and the perpetuation of the error would have been prevented. As for the employee's contention that he should only be held liable for the amount of the initial pay-setting error, and not the entire debt, we have no authority to allow an employee to pay back only a portion of what he owes when waiver is not appropriate.

Conclusion

The employee's request for reconsideration is denied, and we affirm the decision dated August 28, 2025. In accordance with Instruction ¶ E8.15, this is the final administrative action in this matter.

SIGNED: Catherine M. Engstrom

Catherine M. Engstrom
Administrative Judge
Chair, Claims Appeals Board

SIGNED: Michelle P. Tilford

Michelle P. Tilford
Administrative Judge
Member, Claims Appeals Board

SIGNED: David F. Hayes

David F. Hayes
Administrative Judge
Member, Claims Appeals Board