

KEYWORDS: waiver of indebtedness; timeliness

DIGEST: 1. The waiver authority provided by 5 U.S.C. § 5584 applies only to claims arising out of erroneous payments and not payments that were valid when made. 2. Financial hardship is not a factor for consideration in determining whether a waiver is appropriate.

CASENO: 2009-WV-042405.3

DATE: 4/14/2010

DATE: April 14, 2010

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| _____) | |
| In Re:) | |
| [REDACTED]) | Claims Case No. 2009-WV-042405.3 |
| Claimant) | |
| _____) | |

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGESTS

1. The waiver authority provided by 5 U.S.C. § 5584 applies only to claims arising out of erroneous payments and not payments that were valid when made.

2. Financial hardship is not a factor for consideration in determining whether a waiver is appropriate.

DECISION

An former employee of the Army requests reconsideration of the March 15, 2010, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2010-WV-042405.2. In that decision, DOHA affirmed an initial determination by the Defense Finance

and Accounting Service (DFAS) in which DFAS concluded that the employee's debt cannot be considered for waiver under 5 U.S.C. § 5584.

Background

The record indicates that the employee became indebted to the government in the amount of \$1,588.20 after the Army advanced sick leave to her and she separated before she could earn enough sick leave to repay the advance. In upholding DFAS's initial determination, DOHA's adjudicator concluded that because the advance of sick leave was proper when made, waiver under 5 U.S.C. § 5584 is not available. An erroneous payment is a precondition for waiver of a debt under 5 U.S.C. § 5584. DOHA's adjudicator also noted the employee's request that waiver be granted based on financial hardship, but indicated that financial or personal hardship is not a basis on which to predicate a waiver. The employee seeks reconsideration based on such hardship.

Discussion

We have authority to waive collection of "an erroneous payment of pay or allowances" if collection would be against equity and good conscience and not in the best interest of the United States. *See* 5 U.S.C. § 5584 (a). Because there is no "erroneous payment" involved here, waiver cannot be considered.

Even if waiver could have been considered, under the regulations that implement this statute, "[f]inancial hardship is not a factor for consideration in determining whether a waiver is appropriate." *See* DoD Instruction 1340.23, ¶ E4.1.7 (February 14, 2006). The employee should address her concerns about the financial impact of the debt collection to DFAS.

Conclusion

We affirm the March 15, 2010, appeal decision. In accordance with DoD Instruction 1340.23, ¶ E8.15, 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: Natalie L. Bley

Natalie L. Bley
Member, Claims Appeals Board