



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 26, 2024

CBCA 8041-DBT

In the Matter of RONALD E.

Ronald E., Petitioner.

Aaron J. Pound, Office of General Counsel, General Services Administration, Washington, DC, appearing for General Services Administration.

GOODMAN, Board Judge.

This decision is issued based on a pre-offset paper hearing pursuant to 41 CFR 105-56.008 to .009 (2023).¹ The hearing official for such hearings is a judge of this Board. 41 CFR 105-56.003(m).

Background

Petitioner is an employee of the General Services Administration (GSA). On November 6, 2003, the GSA payroll office was instructed via e-mail to start post hardship differential payments, effective September 6, 2003, for petitioner, whose duty station was listed as Seoul, South Korea. Exhibit 1.² On January 9, 2008, petitioner's duty station was

¹ Regulation requires a written decision within sixty days from the date of submission of the employee's (petitioner's) petition for a hearing. 41 CFR 105-56.009(a). The hearing official granted petitioner's two requests for a delay in proceedings pursuant to 41 CFR 105-56.004(k) to allow petitioner additional time to submit his information to complete the written record.

² Exhibits referenced in this decision are the exhibits attached to GSA's April 4, 2024, submission. Various documents have been submitted multiple times by the parties.

moved to Osan, South Korea, and the GSA payroll office received another instruction for post hardship differential for the debtor – this time for Osan, South Korea. Exhibit 2.

Post hardship differential payments are governed by the Department of State Standardized Regulations (DSSR), part 500. On April 3, 2016, the DSSR was revised to eliminate the post hardship differential for overseas employees stationed in Osan, South Korea. Exhibit 4; *compare with* Exhibit 3. No instruction was sent to the GSA payroll office directing the implementation of this change with regard to petitioner.³ As a result, petitioner continued to receive post hardship differential payments at five percent of gross pay, and, according to GSA, the result was that petitioner was overpaid from the pay period ending April 19, 2016, through the pay period ending January 13, 2024; the consolidated payroll reports for petitioner document his payments, which GSA alleges show the erroneously paid post hardship differential amounts for the years 2016 through 2024. Exhibits 5-12.

GSA calculates the gross accumulated debt amount as \$45,250.96. After GSA recovered mandatory deductions and applied these to the debt, the net balance of the alleged debt is \$41,680.26, as evidenced by a worksheet showing the deductions applied to the debt. Exhibit 13.

Petitioner was notified of this debt by letter dated February 21, 2024 (debt letter), with an accompanying notification of debtor rights. Exhibits 14, 15. The debtor rights notice included instructions on how to request a waiver:

Request a waiver. A waiver request may only be submitted if the overpayment of pay and allowance is due to an administrative error. The waiver request should be submitted in writing with an original signature to the official who signed the demand letter. You have up to three years from the date on which the erroneous payment was discovered to request a waiver. A waiver may be granted if collecting the debt would be against equity and good conscience and not in the best interest of the United States. Waiver cannot be granted where there is an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim. The employee should include all information that he or she believes is relevant to their request for waiver in their request, including any supporting documentation.

Exhibit 15 at 1.

³ Neither party asserts that any instruction was sent to implement this change with regard to any other employee.

On March 11, 2024, GSA filed petitioner's request for a pre-offset hearing. On April 4, 2024, GSA counsel submitted a written narrative and documents relating to the alleged debt.⁴ On April 8, 2024, the hearing official held a telephone conference with petitioner and GSA counsel. During that conference, petitioner elected to have the pre-offset hearing conducted as a paper hearing pursuant to 41 CFR 105-56.008. Petitioner also stated that he had decided to defer requesting a waiver pursuant to 41 CFR 105.56.005(b) – and as set forth in the notification of debtor rights attached to the debt letter – until he received the outcome of the pre-offset hearing. GSA counsel stated that the written narrative and supporting documents previously submitted supported GSA's position and it did not have additional documents to submit. Petitioner requested and was granted additional time to submit a written narrative and any other documents he regarded as relevant to the proceedings. Board's Second Order on Proceedings (Apr. 9, 2024).

On June 14, 2024, petitioner submitted his narrative and supporting documentation, and on June 20, 2024, the record was closed. Petitioner's narrative confirmed the facts alleged by GSA – that the post hardship differential was eliminated, the GSA payroll office was not notified of its elimination, and petitioner continued to receive post hardship differential payments until the error was discovered. He did not question the calculation of the amount of the alleged debt. Petitioner also stated that there was no procedure in place to advise him of the elimination of the differential. With regard to his factual allegations, he stated further:

The above facts establish beyond a shadow of a doubt, that the alleged debt was an administrative error on the part of the agency, devoid of any questionable actions or intention on my part. Furthermore, I was never, at anytime, informed by payroll, or any other party, of a requirement on my part to monitor the [Department of State (DoS)] system to track entitlements or to apprise the payroll office to adjust them when the DoS changed their determinations. There is no documentation that I know of which codifies such a requirement. As a Federal Acquisition Service Defense Representative, I lacked the background, training, and information to simply "know" that this was a requirement. I reasonably relied upon regional staff and the OCFO Payroll Office to conduct their post differential reviews to ensure compliance with the State Department rules regarding the aforementioned entitlement.

Since there was no policy in place during the time of the administrative error by GSA to establish roles and instruct foreign based employees on post

⁴ The facts alleged and the documents submitted are those referenced in the preceding paragraphs of this decision.

differential payments, I do not think it is fair to penalize me for an administrative error beyond my expertise and control. According to OPM, “Under 5 U.S.C. [§] 5584 [(2018)], an authorized official may waive recovery of overpayments resulting from erroneous payment to an employee of (1) pay or allowances or (2) travel, transportation, or relocation expenses and allowances. Use of the waiver authority is discretionary on the part of the authorized official. An employee’s overpayment debt may be waived in whole or in part. A waiver decision must be based on a finding that collection would be against equity and good conscience and not in the best interests of the United States. An erroneous payment for which collection is waived is deemed to be a valid payment.”

I believe my case meets all of the above criteria.⁵

Discussion

The information submitted by GSA establishes that petitioner was erroneously paid amounts to which he was not entitled, which resulted in an overpayment by the agency. Petitioner does not question that he was overpaid or GSA’s calculation of the overpayment. The facts alleged by petitioner and GSA prove that the overpayment was the result of administrative error by the relevant agencies for failure to notify the GSA payroll office of the elimination of the post hardship differential applicable to petitioner’s duty station. Additionally, petitioner’s receipt of excess amounts was not petitioner’s fault. Even so, the fact that the overpayments were made in error, through no fault of petitioner, does not relieve petitioner of responsibility to repay GSA the improperly paid amount. *Shayla C.*, CBCA 8044-DBT, slip op. at 3 (May 16, 2024). The law is clear that, under such circumstances, the employee is responsible for repaying the amount overpaid.

In *Advanced Injection Molding, Inc. v. General Services Administration*, GSBCA 16504, et al., 05-2 BCA ¶ 33,037, *modified on reconsideration*, 05-2 BCA ¶ 33,097, one of our predecessor boards explained:

It is a venerable principle that after the Government pays money by mistake to someone having no right to keep the funds, the Government may recover

⁵ Petitioner’s submission contained additional explanation as to why he believed his situation fulfills the requirements for waiver. As discussed herein, the hearing official does not have the authority in this pre-offset hearing to consider a request for waiver. Therefore, petitioner’s explanation of his position with regard to waiver is not addressed by the hearing official in this decision.

that money. *United States v. Wurts*, 303 U.S. 414, 415-16 (1938) (citing *Wisconsin Central Railroad v. United States*, 164 U.S. 190, 212 (1896); *United States v. Burchard*, 125 U.S. 176, 180, 181 (1888)). The Court of Claims has explained that “no officer or agent of the Government is clothed with authority to disburse money belonging in the public treasury without authority so to do,” and that “when a payment is erroneously or illegally made it is in direct violation of article IV, section 3, clause 2, of the Constitution.” *Fansteel Metallurgical Corp. v. United States*, 172 F. Supp. 268, 270 (Ct. Cl. 1959) “Under these circumstances it is not only lawful but the duty of the Government to sue for a refund.” *Id.*; see also *USI Security Systems*, GSBCA 9990-COM (Nov. 1, 1989); *Drain-A-Way Systems*, GSBCA 7022, 84-1 BCA ¶ 16,929, at 84,217 (1983).

05-2 BCA at 163,756; see also *Stanley McM*, GSBCA 16935-DBT, slip op. at 3-4 (Aug. 8, 2006).

Petitioner has asked that the debt be waived. During the initial conference, the hearing official explained that a request for waiver must be directed to and resolved in another forum, as set forth in the notification of debtor rights attached to the debt letter and 5 U.S.C. § 5584 – the statute cited by petitioner. The hearing official in this pre-offset hearing is not the “authorized official” with authority to waive the debt pursuant to 5 U.S.C. § 5584. Therefore, the hearing official cannot determine the validity of petitioner’s position with regard to waiver or grant a waiver of the debt in this proceeding.

In addition to the notification of debtor rights attached to the debt letter, the following regulation advises the debtor that the debt may be suspended pending resolution of a waiver request:

Waiver. An employee may submit a signed waiver request of overpayment of pay or allowances (e.g., 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716) to the GSA National Payroll Center (NPC). When an employee requests waiver consideration, further collection on the debt may be suspended until a final administrative decision is made on the waiver request. During the period of any suspension, interest, penalties and administrative charges may be held in abeyance. GSA will not duplicate, for purposes of salary offset, any of the notices/procedures already provided the debtor prior to a request for waiver.

41 CFR 105-56.005(b).

Petitioner may continue to seek relief through a waiver. The notification of debtor rights advises that the request for waiver be sent to “the official who signed the demand

letter,” Exhibit 15 at 1, and the regulation quoted above states that the request should be sent “to GSA National Payroll Center.” However, 5 U.S.C. § 5584 states that a claim of the United States against a person arising out of an erroneous payment of pay or allowances may be waived by the head of the agency if the amount is not more than \$1500 or, if greater than this amount, by the Director of the Office of Management and Budget. 5 U.S.C. § 5584(a)(2), (g)(2). Accordingly, petitioner should ascertain the proper official to whom he must address his request for waiver. See *Shayla C.*, slip op. at 2.

Decision

The debt asserted by GSA is valid. Petitioner may still exercise his right to request waiver of the debt.

Allan H. Goodman
ALLAN H. GOODMAN
Board Judge