



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

January 9, 2007

CBCA 496-DBT (GSBCA 16974-DBT)

In the Matter of DAVID L. [REDACTED]

David L. [REDACTED], Petitioner.

James E. Hicks, Senior Attorney, Administrative Law Section, Office of Chief Counsel, Drug Enforcement Administration, Department of Justice, Alexandria, VA, appearing for Department of Justice.

GOODMAN, Board Judge.

Petitioner is a regional director of the Drug Enforcement Administration (DEA). In September 2005 he was informed by the DEA Administrator that as the result of a Senior Executive Service pay-for-performance review he would receive a cash award and an increase in salary to \$152,016 per year. The agency paid the cash award to petitioner and issued a Standard Form 50 - Notice of Personnel Action (SF 50) effective January 8, 2006, increasing petitioner's salary to \$152,016.

Petitioner was paid at this salary level through March 18, 2006, when the agency realized it had made an administrative error in calculating petitioner's salary. The petitioner was verbally informed of the agency's error by an individual in the DEA's human resources office and received another SF 50 effective January 8, 2006, adjusting his salary to \$140,916, which the agency asserts was petitioner's correct salary level. The agency issued a notice of debt seeking to offset petitioner's salary payments by \$1573.11, the amount which the agency asserts petitioner was overpaid beginning January 8, 2006, as the result of its administrative error.

Thereafter petitioner requested that the agency waive the debt, and the agency denied the request for waiver.¹ On September 22, 2006, petitioner requested an opportunity for a hearing concerning the existence or amount of the debt, as provided by 5 U.S.C. § 5514 (2000). On October 11, 2006, the Board received a submission from the DEA with a request that the Board provide the requisite opportunity for a hearing. Included with that request was petitioner's written statement in support of his waiver request.

On January 8, 2007, the Board held a conference with petitioner and agency counsel. During that conference petitioner confirmed the foregoing facts, acknowledged that he did not dispute that the agency inadvertently miscalculated his salary and erroneously overpaid him until the error was discovered, and stated that he understood that he was not entitled to the sum which the agency seeks to recoup. The petitioner agreed that a hearing was not necessary to further develop the record. The Board informed petitioner during the conference that petitioner was liable for the debt, as the Government is entitled to recover sums erroneously paid, even though the agency had made the error resulting in the overpayment and petitioner had no knowledge of the miscalculation until informed by the agency.² Petitioner is also liable for interest as required by law, unless waived by the head of the agency. 31 U.S.C. § 3717.

Agency counsel stated during the conference with the Board that the agency would be amenable to entering into a repayment schedule for the debt instead of a lump-sum payment to minimize the hardship on petitioner. Accordingly, the agency and the petitioner should enter into a repayment schedule for partial payments until the debt is paid.



ALLAN H. GOODMAN
Board Judge

¹ In his request for waiver, petitioner acknowledged that the agency had erroneously calculated his salary and that his correct salary level was the reduced amount stated in the second SF 50, but requested waiver of the debt as the error was the agency's and not his own.

² "Few principles are so well established as the right of the Government to recover by offset or otherwise sums . . . erroneously paid. Moreover, it cannot be estopped from doing so by the mistakes of its officers or agents." *Lodge 2424 v. United States*, 564 F.2d 66, 71 (Ct. Cl. 1977).