

DATE: September 29, 2020

In Re:

[REDACTED]

Employee

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Claims Case No. 2017-WV-110301.3

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Payments which are valid when made are not erroneous payments and, therefore, may not be considered for waiver under 5 U.S.C. § 5584.

DECISION

A former employee of the National Security Agency (NSA) requests reconsideration of the May 18, 2020, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2017-WV-110301.2. In that decision, this Office determined that the request for waiver could not be considered.

Background

On July 31, 2009, the employee signed a DD Form 1556-NSA, *Request, Authorization, Agreement, Certification of Training and Reimbursement*, requesting to take training courses to be paid for by NSA. Section 38 of the DD Form 1556-NSA specifies that the employee agrees to reimburse the NSA if she should withdraw from the training or fail to complete the training or not meet the grade requirements of the training program. NSA paid for the training pursuant to the *Government Employees Training Act*, 5 U.S.C. § 4108. NSA determined the employee failed to meet the grade requirements for the course and indebted her for the cost of the course in the amount of \$5,922.00. The employee requested waiver of the debt based on her contention that her tenure at NSA was very upsetting due to workplace discrimination and retaliation which made it impossible for her to concentrate on her academic studies.

In the appeal decision, the DOHA adjudicator determined that the debt could not be considered for waiver because no erroneous payments were made. In her request for reconsideration, the employee acknowledges that no erroneous payments were made to her. However, she contends her debt should be forgiven since the debt was not collected while she was still an NSA employee and the government had sufficient time to collect the debt. She also asserts that NSA is continuing to harass and unjustly attack her and requests that the debt be pardoned by NSA.

Discussion

Our authority in this case is limited to a consideration of whether the employee's debt may be waived under 5 U.S.C. § 5584. Under that section we have the authority for waiving claims for 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 interests of the United States. Generally, these criteria are met by a finding that the claim arose from administrative error with no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee or any other person having an interest in obtaining the waiver. If the payments were correct when made, we have no authority to relieve an employee of her obligation to repay the government, regardless of subsequent events.

In this case, there is no indication that the educational benefits paid to the employee or on the employee's behalf were erroneous when made. In addition, educational benefits are not considered "pay and allowances" as the term is used under 5 U.S.C. § 5584. Although we have no authority to consider the employee's debt for waiver, our decision does not preclude the employee from seeking other available remedies. The DOHA adjudicator noted in her decision that the *Government Employees Training Act* provides the authority for the head of the agency concerned, under implementing regulations, to waive in whole or in part the recovery of expenses such as tuition, if it is shown that the recovery would be against equity and good conscience or against the public interest. *See* 5 U.S.C. § 4108; and Chapter 4 of Volume 16 of DoD 7000.14-R, the Department of Defense Financial Management Regulation. In this regard, the employee should contact the Director of the NSA. *See* 2014-WV-081901.2 (June 10, 2015).

Conclusion

The employee's request for reconsideration is denied, and we affirm the May 18, 2020, appeal decision in DOHA Claim No. 2017-CL-110301.2. In accordance with DoD Instruction 1340.23 ¶ E8.15, this is the final administrative action of the Department of Defense under 5 U.S.C. § 5584.

SIGNED: Catherine M. Engstrom

Catherine M. Engstrom
Chairman, Claims Appeals Board

SIGNED: Charles C. Hale

Charles C. Hale
Member, Claims Appeals Board

SIGNED: Gregg A. Cervi

Gregg A. Cervi
Member, Claims Appeals Board