

DATE: September 2, 2020

In Re:)
[REDACTED]) Claims Case No. 2019-WV-120407.2
Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

An employee who resigned prior to the termination of her required period of service under a Student Loan Repayment Service Agreement was required to reimburse the government for the entire amount of loan repayments the government made on her behalf. Under 5 U.S.C. § 5584, the resulting debt may not be considered for waiver since the payments were proper when made.

DECISION

A former employee of the U.S. Army requests reconsideration of the May 18, 2020, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2019-WV-120407. In that decision, DOHA determined that the request for waiver could not be considered.

Background

On August 22, 2017, the employee executed a *Student Loan Repayment Service Agreement*, entitling her to the government’s repayment of up to \$10,000 per fiscal year for three years on her outstanding federally insured student loans. In the agreement, the employee agreed to serve in her position with the Army for a minimum of three years beginning October 1, 2017. Specifically, the employee agreed to the following:

If I leave DoD (Note: The Veterans Administration is not part of DoD) before I complete the period of service specified in this agreement (voluntarily or for cause), I will reimburse the US Army

Medical Command for the entire amount of loan repayments considered as taxable wages that the US Army Medical Command has made in my behalf.

On October 1, 2017, student loan repayments began on the employee's behalf. On November 24, 2018, the employee left her position with the U.S. Army. On November 25, 2018, she was appointed to a position with the Department of Veterans Affairs. Since the employee left her position with the Army prior to completing the period of time specified in the agreement, she was required to reimburse the government for the loan repayments totaling \$10,000.00 made on her behalf by the Army.

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 states that when she signed the agreement, she had no intention of leaving the Army, but then she was diagnosed with cancer. She acknowledged that the student loan repayments were not erroneous, but she did not take them knowing that she would be leaving prior to her retirement. She cites to the statute authorizing the government to make student loan repayments to specified employees, 5 U.S.C. § 5379. She cites specifically to section 5739(c)(3) which states that the head of the agency concerned may waive, in whole or in part, a right of recovery under this subsection if it is shown that recovery would be against equity and good conscience or against the public interest. She knows of two other employees who also received student loan repayments and also left, but did not have to pay the agency back.

Discussion

Under the applicable statute, 5 U.S.C. § 5379, agencies are authorized to establish a program under which they may agree to repay by direct payments on behalf of certain qualified personnel any student loan previously taken out by an employee. However, an employee selected to receive this benefit must enter into a written service agreement to complete a period of employment (not less than three years) with the agency. The employee must also agree if he or she voluntarily separates before the end of the period specified in the agreement, to repay the government the amount of any benefits received by the employee from the agency. Under 5 U.S.C. § 5379(g), the Office of Personnel Management (OPM) has the authority to prescribe regulations relating to the standards and requirements necessary to carry out the student loan repayment program. These regulations are found in 5 C.F.R. § 537. Therefore, an employee's entitlement to such benefits under the student loan repayment program are subject to these statutory provisions, applicable regulations, and the provisions of the written agreement.

DOHA's authority in this case is limited to consideration of whether the employee's debt may be waived under 5 U.S.C. § 5584. Under 5 U.S.C. § 5584, we have the authority to waive the government's claims 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. By definition, a payment must be erroneous when made if it is to be considered for waiver under 5 U.S.C.

§ 5584. If the payment was correct when made, we have no authority to relieve an employee of the obligation to repay the government, regardless of subsequent events. Based on the facts in the record, the claim of the United States against the employee is not one “arising out of an erroneous payment of pay or allowances.” *See* 5 U.S.C. § 5584(a). Therefore, the statutory precondition for waiver consideration is not satisfied. *See* DOHA Claims Case No. 2017-WV-071105.2 (August 28, 2017); and DOHA Claims Case No. 2012-WV-042402.2 (July 27, 2012).

Our decision in this case does not preclude the employee from seeking review by the proper authorities. Under 5 U.S.C. § 5379(c)(3), agencies may waive a right of recovery of an employee’s debt if they determine it to be against equity and good conscience or contrary to the public interest. *See also* 5 C.F.R. § 537.109(e). This waiver authority is exercised by the agency component. Therefore, the employee may wish to pursue this matter with the Army.

Conclusion

The employee’s request for relief is denied, and we affirm the May 18, 2020, appeal decision. In accordance with DoD Instruction 1340.23 ¶ E8.15, this is the final administrative action of the Department of Defense concerning the employee’s request for waiver 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