

DATE: January 30, 2021

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In Re: )  
)

[REDACTED] )

Claimant )  
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Claims Case No. 2020-WV-040802.2

**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

Under 31 U.S.C. § 3702(a)(1), the Defense Office of Hearings and Appeals (DOHA) has no authority to consider an employee's claim that he made payment of his Post-1956 military service deposit (MSD) to the Defense Finance and Accounting Service (DFAS).

**DECISION**

An employee of the U.S. Army requests reconsideration of the DOHA appeal decision in DOHA Claim No. 2020-WV-040802, dated July 27, 2020.

**Background**

From September 3, 1979, through March 31, 1984, the employee performed active duty service as a member of the Army. On August 12, 1992, the member completed a SF-2803, *Application to Make Deposit or Redeposit – Civil Service Retirement System*, requesting to pay the deposit necessary to obtain credit for the military service that he had completed, *i.e.*, a military service deposit (MSD). On November 3, 1992, the Defense Finance and Accounting Service (DFAS) notified the member that the cost to purchase the period of service would be \$2,799.65, and that payment could be made via payroll deduction or a lump sum payment. DFAS's notification also advised the member that interest on the amount would accrue effective January 1, 1993. On December 3, 1992, the employee completed the *Payment Plan – Military Service Deposit, Federal Employees Retirement System (FERS)* form indicating that he wished to make a lump sum payment and that his check would be mailed to DFAS in Columbus, Ohio. On that form, the employee listed his full name, but provided an incorrect social security number.

On December 7, 1992, the employee requested a withdrawal in the amount of \$2,799.65 from an Individual Retirement Account (IRA) held at his own financial institution, and a transfer of the funds to an unidentified institution.

In 2008 the employee initiated efforts to make additional MSDs. At that time, the employee found out that no one at DFAS, the Washington Headquarters Service (WHS), the Office of Personnel Management (OPM) or the National Archives and Records Administration (NARA), had a record of his 1992 MSD. On May 24, 2018, DFAS determined that the payment was not received.

On September 25, 2018, the employee submitted a claim to DFAS for the \$2,799.65, plus accrued interest. On June 5, 2019, DFAS denied the employee's claim, noting that they had no record of the employee having paid the MSD. On July 2, 2019, the employee appealed the denial of his claim, asserting that his bank records reflect a successful transaction of \$2,799.65 from his account on December 7, 1992. Additionally, he stated that there were no records that the funds were returned to his bank account. The employee also stated that although there was a typographical error concerning his social security number on the *Payment Plan* dated December 3, 1992, there was other identifying information on the form that would have led DFAS to associate the lump sum payment his bank transferred to DFAS with his MSD.

In the appeal decision, the DOHA adjudicator noted that DFAS had informed the member that the present cost of his MSD was \$9,509.13, which included accrued interest. The adjudicator explained that under 5 U.S.C. § 5584, DOHA had no authority to consider the \$9,509.13 for waiver, since that statute specifically limits the waiver authority to consideration of claims against specified employees for the erroneous payment of salary or pay and allowances. In the employee's case, the obligation to pay for the MSD did not arise from an erroneous payment of salary or pay and allowances. As for the employee's claim for refund of the \$2,799.65, he alleges he paid for the MSD but DFAS states they never received, the adjudicator found that DOHA did not have the authority to consider the claim under 31 U.S.C. 3702(a)(1), since that authority is limited to the consideration of claims for uniformed service members' pay, allowances, travel, transportation, unused accrued leave, retired pay and survivor benefits. However, the adjudicator advised the employee that the proper authority for consideration of his claim for refund of the MSD rested with OPM under 31 U.S.C. § 3702(a)(2).

In the employee's reconsideration request, he states that the issue in his case is whether he has presented clear and convincing evidence that he paid the MSD to DFAS in 1992. He states that under 31 U.S.C. 3702(a)(2), his claim would be properly be considered by OPM if he was retired. However, he is still currently employed as a civilian employee with the Department of Defense. He states that his MSD issue must be resolved before he separates from his civilian employment and therefore OPM is not the adjudicator given that he is still a federal employee. He questions if DOHA is not the office to hear his appeal of DFAS's denial of his claim, then where could he go to submit his appeal within the Department of Defense. He further states that he has presented evidence that the unidentified institution where the transfer of \$2,799.65 went was DFAS in Columbus, and the payment was for MSD.

## Discussion

The Post-1956 MSD is a voluntary contribution made by an employee to OPM, through the employee's agency, in order to receive retirement credit for the periods of military service. The deposit must be made before the employee retires. Otherwise, OPM will not grant credit for the military service towards the employee's civilian retirement annuity.

Under 31 U.S.C. § 3702(a)(1), DOHA has the authority to settle claims against the United States Government involving uniformed service members' pay and allowances, including retired pay. Under 31 U.S.C. § 3702(a)(2), the OPM has the authority to settle claims involving federal civilian employees' compensation and leave.

In this case, it is not necessary for us to determine whether or not the employee has proved his claim to refund of the \$2,799.65 he contends he paid for the MSD, because the subject matter at issue does not come within the jurisdiction of this Board. The member's position is that he has proved by clear and convincing evidence that he paid DFAS the MSD in 1992. However, this Board does not have authority to review the employee's claim of entitlement or DFAS's denial of his claim for entitlement to the \$2,799.65 since our settlement authority is limited to those claims that fall under the purview of 31 U.S.C. § 3702(a)(1). As explained by the adjudicator in the appeal decision, the employee may appeal the denial of his claim to OPM.

## Conclusion

The claimant's request for relief is denied, and we affirm the appeal decision dated July 27, 2020. In accordance with DoD Instruction 1340.21 ¶ E7.15.2, this is the final administrative action of the Department of Defense in this matter.

SIGNED: Catherine M. Engstrom

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Catherine M. Engstrom  
Chairman, Claims Appeals Board

SIGNED: Charles C. Hale

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Charles C. Hale  
Member, Claims Appeals Board

SIGNED: Jennifer I. Goldstein

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Jennifer I. Goldstein  
Member, Claims Appeals Board