

DATE: August 17, 2021

In Re:)

[REDACTED])

) Claims Case No. 2021-WV-012506.2

Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

The unearned portion of a Selective Reenlistment Bonus may not be considered for waiver under 10 U.S.C. § 2774 because payment was proper when made.

DECISION

A former member of the U.S. Army Reserve (USAR), requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claims Case No. 2021-WV-012506, dated May 3, 2021.

Background

On November 6, 2013, the member reenlisted in the USAR for a period of six years. As a result, she was entitled to receive a \$10,000.00 reenlistment bonus payment. On January 15, 2014, she received the \$10,000.00 bonus payment. However, on July 12, 2015, she was released from the USAR due to unsatisfactory participation. Since she did not complete the terms of her bonus agreement, recoupment a *pro rata* portion of the bonus payment in the amount of \$7,222.22 was required. On February 21, 2020, the member was released from duty because of physical disability incurred while entitled to basic pay and under circumstances that permitted her retirement for permanent physical disability. The Army placed her on the retired list effective March 27, 2020, in the retired grade of an E-5, and determined that her disability resulted from a combat-related injury as defined in 26 U.S.C. § 104.

In the appeal decision, the DOHA adjudicator sustained the Defense Finance and Accounting Service's determination that the \$7,222.22 could not be considered for waiver because it did not represent an erroneous payment. The adjudicator explained that a debt arising

from a properly paid reenlistment bonus, which later must be recouped because of a member's unsatisfactory completion of the period of service, is not an indebtedness arising from an erroneous payment that may be considered for waiver.

In her request for reconsideration, the member states that in her prior deployment to Afghanistan before her reenlistment, she experienced mortar attacks almost every night and lived in constant fear of losing her life during her tour. In 2013 she began treatment at a mental health facility. She states that after her deployment, she continued to struggle with what she now can identify as Post Traumatic Stress Disorder (PTSD). She began to seek professional treatment in 2016, but she had already missed a lot of her drills. She states that in February 2020 she was medically retired after receiving an 80% service-connected disability rating from the Medical Evaluation Board (MEB). She requests that her reenlistment bonus debt be forgiven because her inability to attend drills and resulting unsatisfactory status was directly related to the findings of the MEB and the reasons for her retirement.

Discussion

Under 10 U.S.C. § 2774, we have the authority to waive a claim for an erroneous overpayment of pay or allowances if collection 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 the lack of good faith on the part of the member. While our office has the authority to consider certain claims of the United States for waiver under 10 U.S.C. § 2774, the statute specifically limits our authority to only claims that arise from an erroneous payment of pay and allowances. A debt cannot be considered for waiver unless the payment was erroneous when made, and we have held that a debt arising from the unearned portion of a reenlistment bonus does not arise from an erroneous payment, since the payment was proper when made. *See* DOHA Claims Case No. 2010-WV-101303.2 (March 15, 2011); and DOHA Claims Case No. 07103007 (November 15, 2007).

In this case, the record reflects that the reenlistment bonus payment was proper when made. However, DOHA's decision concerning waiver does not preclude the member from pursuing other forms of relief. We note that under 37 U.S.C. § 373, the Secretary concerned (here the Secretary of the Army), may grant exception to the repayment requirement of an unearned portion of a bonus payment, if the Secretary concerned determines that the imposition of repayment requirements with regard to a member of the uniformed services would be contrary to a personnel policy or management objective, would be against equity and good conscience, or would be contrary to the best interests of the United States. Section 373(b)(2) states that if a member is separated with a combat-related disability, the Secretary concerned shall not require repayment by the member of the unearned portion of the bonus. *See also* the repayment provisions under the Department of Defense Financial Management Regulations (DoDFMR), Volume 7A, Chapter 2, paragraph 020303(B). DOHA has been advised by DFAS and a member of the U.S. Army Reserve Pay Center that the member should pursue forgiveness of the debt under 37 U.S.C. § 373, with her former unit and chain of command. Her command should then forward the request for action to the U.S. Army Reserve Command (USARC) Headquarters G1.

Conclusion

The member's request for reconsideration is denied, and we affirm the appeal decision in DOHA Claim No. 2021-CL-012506, dated May 3, 2021. In accordance with DoD Instruction 1340.21 (May 12, 2004) ¶ E7.15.2, this is the final administrative action of the Department of Defense in this matter.

SIGNED: Catherine M. Engstrom

Catherine M. Engstrom
Chairman, Claims Appeals Board

SIGNED: Richard C. Ourand, Jr

Richard C. Ourand, Jr
Member, Claims Appeals Board

SIGNED: Jennifer I. Goldstein

Jennifer I. Goldstein
Member, Claims Appeals Board