

DATE: July 18, 2022

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In Re: )  
[REDACTED] ) Claims Case No. 2021-WV-090708.2  
Claimant )

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**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

Title 10, United States Code (U.S.C.), § 2774 provides authority for waiving claims for erroneous payments of pay and allowances made to or on behalf of members or former members of the uniformed services, if collection of the claim would be against equity and good conscience and not in the best interest of the United States.

**DECISION**

A retired U.S. Army member requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2021-WV-090708, dated March 7, 2022. In that decision, this Office determined that a debt of \$3,779.55, made up of unpaid Survivor Benefit Plan (SBP) premiums, could not be considered for waiver.

**Background**

The member retired from the Army in 1968, based on a permanent disability. In 1973 he elected to participate in SBP with spouse and child coverage. In 2002 since his disability compensation from the Department of Veterans Affairs (VA) exceeded his eligible retired pay, he was required to make direct remittance payments to the Defense Finance and Accounting Service (DFAS) for his SBP premiums. DFAS determined the member was required to make \$5,220.39 in direct remittance payments for the period November 1, 2004, through September

30, 2008. However, the member made only \$1,440.84 in direct remittance payments, resulting in a debt on his account in the amount of \$3,779.55 (\$5,220.39 - \$1,440.84).

The member requested waiver of the debt under the provisions of 10 U.S.C. § 2774. DFAS subsequently determined that the debt could not be considered for waiver because it did not arise out of an erroneous payment. In the appeal decision, the DOHA adjudicator upheld DFAS's determination, explaining our waiver authority is specifically limited to claims which have arisen from the "erroneous payment" of military pay or allowances. Since there was no erroneous payment issued to the member, nor was his retired pay miscalculated so that he was overpaid, the debt for direct remittance of SBP premiums could not be considered for waiver.

In his reconsideration request, the member states that since he retired from the Army, he has never paid anything towards SBP. He requests information on where the payments totaling \$1,440.84 for SBP premiums came from. He never knew what his monthly SBP premium payments were since he was no longer in receipt of retired pay. He argues that DFAS failed to inform him of the changes, and intentionally kept him ignorant of the requirement to make direct remittance premium payments for SBP. He doubts the "efficacy of the bookkeeping" by DFAS, and states he has no idea or explanation for the direct remittance payments DFAS says they received. As a result of these failures and concerns regarding DFAS, the member argues that he should be granted "waiver on the grounds of INJUSTICE."

### **Discussion**

Under 10, U.S.C. § 2774, we have the authority to waive the repayment of erroneous payments of military pay and allowances to members or former members of the uniformed services if repayment would be against equity and good conscience and would not be in the best interests of the United States.

The SBP, 10 U.S.C. §§ 1447-1455, is an income maintenance program for survivors of deceased members of the uniformed services. Under the SBP, participating members contribute a portion of their retired pay to fund annuity payments for their designated beneficiaries. As explained by the adjudicator in the appeal decision, the member's debt did not arise from an erroneous payment of pay and allowances. Since the member elected SBP coverage in 1973, he had to pay the premiums for his beneficiaries' coverage. When his VA disability compensation exceeded his retired pay, he was required to pay the SBP premiums by direct remittance. The member received no erroneous payment in this case. Therefore, his debt for the SBP premiums cannot be considered for waiver. *See* DOHA Claims Case No. 08012801 (February 4, 2008).

Regarding the member's concern about DFAS's bookkeeping, a complete history of payment and non-payment of SBP premiums on his account was provided to him as part of the administrative record. The member's account history is set forth on a Direct Remittance Account Computation Audit Sheet (spreadsheet) reflecting when DFAS recorded the member's payment for SBP premiums as zero, and listed that a direct remittance payment was required, from November 1, 2004, through September 30, 2008. During this timeframe, while the member was required to make \$5,220.39 in direct remittance payments, only \$1,412.00 in direct

remittance SBP payments were made. The direct remittance payment of \$28.84 in August 2014 was also applied to the member's account, bringing his total debt for non-payment of SBP premiums to \$3,779.55. Since the establishment of a debt amount is a matter primarily for administrative determination, the member should contact DFAS for any further questions he has regarding the amount of his debt and repayment of it.

### **Conclusion**

The member's request for reconsideration is denied, and the appeal decision dated March 7, 2022, is affirmed. In accordance with Department of Defense Instruction 1340.23 ¶ E8.15, this is the final administrative action of the Department of Defense.

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: Richard C. Ourand, Jr

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Richard C. Ourand, Jr  
Member, Claims Appeals Board