

DATE: February 23, 2023

In Re:)
 [REDACTED]) Claims Case No. 2021-WV-101203.2
)
Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

An employee who resigned prior to the termination of his service under a Recruitment Incentives Agreement was required to reimburse the government for the amount of recruitment incentive payments he received in excess of the amount attributable to his completed service. Under 5 U.S.C. § 5584, the resulting debt may not be considered for waiver since the payment was proper when made.

DECISION

An employee of the U.S. Army requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2021-WV-101203, dated May 31, 2022.

Background

On May 13, 2019, the employee signed the Department of the Army Service Agreement for Recruitment or Relocation Incentives agreeing to serve in the position of a police officer for a period of two years, beginning May 13, 2019, through May 12, 2021, in exchange for retention incentive (RI) payment in the amount of \$7,853.00. A *Notification of Personnel Action* (SF-50) issued on May 26, 2019, granted him the entitlement. During the pay period ending June 8, 2019, the employee properly received the RI payment.

On April 9, 2020, the employee resigned prior to completing the period of time specified in the agreement. As a result, the employee was required to reimburse the government for the

amount of the RI payment he received in excess of the amount that was attributable to the completed portion of the service period set forth under the agreement. This amount was determined to be \$4,429.00.

In the appeal decision, the DOHA adjudicator determined that the debt could not be considered for waiver because no erroneous payment was made. In his request for reconsideration, the employee states that he resigned due to a hostile work environment in which he was subjected to hazing. He also states that repayment of the debt would cause extreme financial hardship for his family since he is the sole provider. He states that if it is determined that he must repay the debt, he requests a repayment plan be arranged so that he can avoid financial hardship for his family.

Discussion

Under 5 U.S.C. § 5753, recruitment payments are payable to certain qualified employees who enter into written service agreements to complete a period of employment with the agency. Any agreement under the statute shall specify, subject to regulations as the Office of Personnel Management (OPM) may prescribe, the terms under which the agreement may be terminated and the effect of the termination. Therefore, an employee's entitlement to such payment is subject to these statutory provisions, applicable regulations, and the provisions of the written agreement. *See generally* Volume 8 of DoD 7000.14R, DoD Financial Management Regulation (DoDFMR), *Civilian Pay Policy and Procedures*; and Recruitment Incentives, 5 C.F.R. § 575.

Our authority in this case is restricted to a 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 would be against equity and good conscience and not in the best interests of the United States, provided there is no indication of fraud, misrepresentation, fault, 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. 2011-WV-081602.2 (December 15, 2011); and DOHA Claims Case No. 08052701 (May 30, 2008).

Our decision under 5 U.S.C. § 5584, does not preclude the employee from addressing the matters he raised in his reconsideration request to the proper authorities. *See* DOHA Claims Case No. 08052701, *supra*. In addition, we note that under 5 U.S.C. § 5753(g), the OPM has the authority to prescribe regulations relating to the repayment of a RI payment when the agreed-upon service period has not been completed. Further, under 5 C.F.R. § 575.111(h), if an employee received RI payments in excess of the amount that would be attributable to the completed portion of the service period, an authorized agency official may waive the requirement to repay the excess amount when, in the judgment of the official, collection of the

excess amount would be against equity and good conscience and not in the best interests of the United States. This authority is separate from DOHA's waiver authority under 5 U.S.C. § 5584. Therefore, the employee may wish to pursue this matter with the Department of the Army. *See* DoDFMR, Volume 16, *Department of Defense Debt Management*, Chapter 4, paragraph 8.10.

Finally, we note that financial hardship is not a factor for consideration in determining whether a waiver is appropriate under 5 U.S.C. § 5584. However, while financial hardship does not provide a basis for waiver, DFAS, at its own discretion, may arrange a repayment plan which takes any hardship appropriately into account.

Conclusion

The employee's request for relief is denied, and we affirm the appeal decision dated May 31, 2022. In accordance with Department of Defense Instruction 1340.23 ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

SIGNED: Catherine M. Engstrom

Catherine M. Engstrom
Chairperson, 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