

DATE: August 28, 2017

In Re:)
[REDACTED]) Claims Case No. 2017-WV-071105.2
Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

An employee who resigned prior to the termination of his 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 his 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 July 24, 2017, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2017-WV-071105. In that decision, DOHA determined that the request for waiver could not be considered.

Background

On March 11, 2012, the employee executed a *Student Loan Repayment Service Agreement*, entitling him to the government's repayment on his behalf of \$10,000 maximum per year for three years on his outstanding federally insured student loans. In the agreement, the employee agreed to serve in his position with the Army for a minimum of three years beginning January 1, 2015. Specifically, the employee agreed to the following:

That in the event I voluntarily leave the Federal Government, or in the event I am involuntarily separated for misconduct or performance before completing the agreed upon period of service,

I will be indebted to the Federal Government and must reimburse the United States Army for the full amount of any student loan repayment benefits received under this service agreement.

On April 28, 2016, 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 loan repayments the Army made on his behalf during the period January 2015 through August 2015 in the amount of \$6,153.92.

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 in May of 2015 his wife received a job transfer and he actively began looking for a job in her job location. He states that he requested to be placed on leave-without-pay (LWOP) so that he could hold his position in the federal government. In August 2015 he moved with his family to his wife's job location. He continued to actively seek employment in the area. He states that his department in the Army constantly requested that he resign from his position. He states that this continued for months until his branch chief contacted him by email instructing him to resign. Therefore, the employee states that his resignation was not voluntary. He cites 5 C.F.R. § 537.109(e) which states that an agency may not require reimbursement of the student loan repayment benefits based on an employee's failure to complete the required period of service if the employee is involuntarily separated for reasons other than misconduct or unacceptable performance.

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 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 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 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 his obligation to repay the government, regardless of subsequent events. Based on the facts in this 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. 2012-WV-042402.2 (July 27, 2012); and DOHA Claims Case No. 2011-WV-102601.2 (January 26, 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.¹ 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 July 24, 2017, 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: Ray T. Blank, Jr.

Ray T. Blank, Jr.
Member, Claims Appeals Board

¹The Department of Defense Financial Management Regulation (DoDFMR) specifically lists other statutory waiver authority that apply to payments that were not erroneously paid. A debt resulting from the non-erroneous payment of Student Loan Repayments is specifically listed under paragraph 040410, Volume 16, Chapter 4 of the DoDFMR.