

KEYWORDS: waiver of indebtedness

DIGEST: A midshipman in the Naval Reserve Officers Training Corps (NROTC) Scholarship Program who disenrolled from the program and failed to complete his subsequent military service obligation was required to reimburse the government for the cost of advanced educational assistance he received. The resulting debt cannot be considered for waiver under 10 U.S.C. § 2774, because the payments were proper when they were made.

CASENO: 2010-WV-042701.2

DATE: 8/12/2010

DATE: August 12, 2010

In Re:)	
[REDACTED])	Claims Case No. 2010-WV-042701.2
Claimant)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

A midshipman in the Naval Reserve Officers Training Corps (NROTC) Scholarship Program who disenrolled from the program and failed to complete his subsequent military service obligation was required to reimburse the government for the cost of advanced educational assistance he received. The resulting debt cannot be considered for waiver under 10 U.S.C. § 2774, because the payments were proper when they were made.

DECISION

A former NROTC midshipman requests reconsideration of the July 8, 2010, decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2010-WV-042701. In that decision, DOHA determined that the government's \$20,960.26 claim against him could not be considered for waiver.

Background

The record shows that on August 23, 2004, the midshipman signed a Naval Reserve Officers Training Corps (NROTC) Scholarship Service Agreement, which enrolled him in the NROTC Scholarship Program and appointed him as a midshipman. As a result, during Fiscal Year (FY) 2004 and FY 2005, educational benefits in the amount of \$20,960.26 were paid on the midshipman's behalf while he attended university. Under the terms of the Scholarship Service Agreement, the midshipman had an obligation to complete his course of instruction at the university and serve eight years of military service. The midshipman disenrolled from the program and signed the NROTC Disenrollment Authorization, CNET 1533/28 effective October 23, 2006. Paragraph 2 on the form states: "The Secretary of the Navy has approved that Midshipman [redacted] be discharged from the Naval Service and that he be required to reimburse the government for the amount of advanced educational assistance received. The following page 13 entry shall be made and forwarded to NSTC (OD4): 'I acknowledge indebtedness to the United States Government for advanced educational assistance in the amount of \$20,960.26 received in the form of NROTC scholarship benefits.'" The form is signed by the midshipman and witnessed. There is also NAVPERS 1070/613 (Rev. 10-81), Administrative Remarks, which states: "16 Jan 07: I acknowledge indebtedness to the United States Government for advance educational assistance in the amount of \$20,960.26 received in the form of NROTC scholarship benefits." This is also signed by the midshipman and witnessed.

The midshipman argues that he suffered an injustice during the disenrollment process and subsequent order of recoupment. He asserts that he was told by the administration that he would only be able to separate from the program in good standing if it was "voluntary," and so he agreed to repay the debt incurred. Otherwise, he understood he would be dishonorably discharged and still ordered to repay the debt. He argues he was forced to relinquish his right to seek an initial waiver from the Secretary of the Navy during the disenrollment process. He states that he understands this is in the discretion of the Secretary of the Navy, but he will continue to appeal any decision which denies waiver of his claim until further investigation is made of his assertions.

Discussion

Section 2774 of title 10, United States Code, 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. Generally, these criteria are met by a finding that the claim arose from an administrative error with no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the member or any other person having an interest in obtaining the waiver.

While this Board has the authority to consider certain claims of the United States for waiver under the provisions of 10 U.S.C. § 2774, we cannot consider a debt for waiver unless it arose from an erroneous payment of pay or allowances. The debt here did not arise from "pay or allowances" as that term is used in 10 U.S.C. § 2774(a) because educational expenses are not considered "pay or allowances". See DOHA Claims Case No. 2009-WV-072004.2 (October 29,

2009), and DOHA Claims Case No. 07101704 (October 30, 2007). Moreover, if the payments were valid when made, we have no authority to relieve a member of his obligation to repay the government. In this case the midshipman signed the NROTC Scholarship Service Agreement. When he disenrolled from the program, he acknowledged on two separate occasions that he would reimburse the government for any advanced educational assistance – at that time, specifically in the amount of \$20,960.26. The fact that the midshipman disenrolled from the program prior to completing the requirements does not change the nature of the payments received. Consideration of the injustices alleged by the midshipman is not within the authority of this Office.¹ He also believes the collection of this debt is against equity and good conscience, and not in the best interests of the United States; however, the payments were proper when made, and were not for “pay or allowances,” and therefore may not be considered for waiver under the provisions of 10 U.S.C. § 2774. As the former midshipman is aware, this Board’s denial of waiver under 10 U.S.C. § 2774 does not preclude him from pursuing other available remedies.²

Conclusion

The former midshipman’s request for relief is denied, and we affirm the July 8, 2010, appeal decision. In accordance with the Department of Defense Instruction 1340.23, ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

///Original Signed///

Michael D. Hipple
Chairman, Claims Appeals Board

///Original Signed///

Jean E. Smallin
Member, Claims Appeals Board

///Original Signed///

Natalie Lewis Bley
Member, Claims Appeals Board

¹ We note, however, that the Board for Correction of Naval Records found on May 12, 2008, after reviewing the midshipman’s record there was “no error or injustice in the procedures used or the evidence considered in your disenrollment from the (NROTC) . . . Under the circumstances, your disenrollment was clearly voluntary. . .”

² See 10 U.S.C. § 2005(a)(3) and 37 U.S.C. § 303a(e) regarding the Secretary of the Service concerned’s authority to enforce payment and to establish by regulations procedures for determining the circumstances under which an exception to the required repayment may be granted.