

KEYWORDS: Waiver of Indebtedness

DIGEST: A physician who resigned prior to the termination of his service under a Recruitment Incentive Service Agreement was required to reimburse the government for the amount of the recruitment incentive bonus (RIB) 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.

CASENO: 2011-WV-081602.2

DATE: 12/15/2011

DATE: December 15, 2011

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In Re: )  
          [REDACTED] ) Claims Case No. 2011-WV-081602.2  
                                  )  
Claimant )

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**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

A physician who resigned prior to the termination of his service under a Recruitment Incentive Service Agreement was required to reimburse the government for the amount of the recruitment incentive bonus (RIB) 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**

A former employee of the U.S. Navy requests reconsideration of the Defense Office of Hearings and Appeals (DOHA) appeal decision in DOHA Claim No. 2011-WV-081602, dated November 14, 2011. In that decision, DOHA affirmed the Defense Finance and Accounting

Service's (DFAS) initial determination that collection of the employee's debt to the government in the amount of \$12,863.00 could not be considered for waiver.

### **Background**

On October 5, 2009, the employee executed a *Recruitment/Relocation or Retention Incentive Service Agreement for Non-Demo Project Selectees or Employees*, entitling him to a recruitment incentive bonus (RIB) in the amount of \$51,452.00. In the agreement, the employee agreed to serve as a Physician in the Navy from October 1, 2009, through September 30, 2010. Specifically, the employee agreed to the following:

I understand that the recruitment/relocation incentive must be recovered if I fail to complete the period of employment established by this Service Agreement, or if I am removed or demoted for cause or receive a rating of record of less than "Fully Successful" or equivalent before expiration of the required minimum service period. The amount of the repayment will be determined in accordance with the policy set by (name of organization). I understand the government may withhold any final pay due to me to apply against or liquidate any indebtedness arising from my violation of this agreement. I further understand that this agreement may be terminated at any time due to insufficient funds and that the decision to terminate this agreement may not be grieved or appealed.

On July 1, 2010, 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 RIB payments 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 \$12,863.00.

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 his resignation was not voluntary. He states that he was threatened with termination if he did not resign.

### **Discussion**

Under the applicable statute, 5 U.S.C. § 5753, recruitment bonuses 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 payments is subject to these statutory provisions, applicable regulations, and the provisions of the written agreement. *See generally* paragraph 030601 of Volume 8 of DoD 7000.14R, DoD Financial Management Regulation (DoDFMR), Civilian Pay Policy and Procedures; and Recruitment Incentives, 5 C.F.R. part 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 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. 2010-WV-122201.2 (July 8, 2011); DOHA Claims Case No. 2010-WV-113004.2 (February 10, 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 RIB when the agreed-upon service period has not been completed.<sup>1</sup>

### **Conclusion**

The employee's request for relief is denied, and we affirm the November 14, 2011, 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.

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<sup>1</sup>Under 5 C.F.R. § 575.111(h), if the employee received recruitment incentive 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. The employee may wish to pursue this matter with the Department of the Navy and the OPM. *See* DOHA Claims Case No. 08052701, *supra*.

Signed: Jean E. Smallin

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Jean E. Smallin  
Chairman, Claims Appeals Board

Signed: Catherine M. Engstrom

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Catherine M. Engstrom  
Member, Claims Appeals Board

Signed: Natalie Lewis Bley

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Natalie Lewis Bley  
Member, Claims Appeals Board