

KEYWORDS: waiver of indebtedness; student loan repayment

DIGEST: An employee who resigned prior to the termination of her required period of service under a Student Loan Repayment Service Agreement was required to reimburse the government for the entire amount of all loan repayments that the government made on her behalf. Under 5 U.S.C. § 5584, the resulting debt may not be considered for waiver since the payment was proper when made.

CASENO: 2012-WV-042402.2

DATE: 7/27/2012

DATE: July 27, 2012

In Re:)
 [REDACTED]) Claims Case No. 2012-WV-042402.2
)
Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

An employee who resigned prior to the termination of her required period of service under a Student Loan Repayment Service Agreement was required to reimburse the government for the entire amount of all loan repayments that the government made on her behalf. 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 Department of Defense (DoD) requests reconsideration of the Defense Office of Hearings and Appeals (DOHA) appeal decision in DOHA Claim No. 2012-WV-042402, dated June 25, 2012. 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 \$10,000.12 could not be considered for waiver.

Background

On April 8, 2010, the employee executed a *Student Loan Repayment Service Agreement*, entitling her to the government's repayment on her behalf of \$10,000 per year for three years on her outstanding federally insured student loans. In the agreement, the employee agreed to serve as a psychologist in DoD for a minimum of three years service beginning April 11, 2010. Specifically, the employee agreed to the following:

If I am separated from DoD for reasons of misconduct or performance, or if I leave DoD voluntarily before I complete the period of service specified in this agreement, I will reimburse DoD for the entire amount of loan repayments considered as taxable wages that DoD has made in my behalf.

On April 29, 2011, 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 DoD made on her behalf during the period April 11, 2010, through April 9, 2011, in the amount of \$10,000.12.

In the appeal decision, the DOHA adjudicator determined that the debt could not be considered for waiver because no erroneous payment was made. In her request for reconsideration, the employee states that DoD used improper hiring practices to recruit her. She states that at the time of her hire, the program director made her promises that were not met. She states that two other employees, hired around the same time as she, were also made the same promises by the director. Since her resignation, she has learned that the program director was forced into retirement. She also states that one of the other two employees resigned shortly after she did for the same reason, the unmet promises. She states that the other employee recently was given a retroactive grade change for the time of her hire, a retroactive promotion at her one-year anniversary and a subsequent promotion. The employee states that these changes indicate an admission of improper hiring practices and support her assertion that the collection of the debt from her is against equity and good conscience, and is not in the best interests of the United States.

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 highly 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 she 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 is subject to these statutory provisions, applicable regulations, and the provisions of the written agreement.

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 she raised in her reconsideration request to the proper authorities. *See* DOHA Claims Case No. 08052701, *supra*. As explained in the appeal decision by the DOHA adjudicator, if the employee wishes to contest the validity of the debt by disputing it and proving her entitlement, she should direct her contention to her former agency and DFAS. Generally, an appeal of a decision by her agency or DFAS on her entitlement would be directed to OPM under 31 U.S.C. § 3702(a)(2). In addition, we note that 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* 5 C.F.R. § 537.109(e). The employee may wish to pursue this remedy with her former agency and the OPM.¹

Conclusion

¹*See* OPM's website for information on the student loan repayment program and employee reimbursements at <http://www.opm.gov/oca/pay/studentloan/HTML/QandAs.asp>.

The employee's request for relief is denied, and we affirm the June 25, 2012, 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: Jean E. Smallin

Jean E. Smallin
Chairman, Claims Appeals Board

Signed: Catherine M. Engstrom

Catherine M. Engstrom
Member, Claims Appeals Board

Signed: Natalie Lewis Bley

Natalie Lewis Bley
Member, Claims Appeals Board