

KEYWORDS: Waiver of Indebtedness

DIGEST: An employee 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) payment 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: 2012-WV-070602.2

DATE: 10/25/2012

DATE: October 25, 2012

In Re:)	
[REDACTED])	Claims Case No. 2012-WV-070602.2
Claimant)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

An employee 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) payment 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. 2012-WV-070602, dated September 21, 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 \$4,166.70 could not be considered for waiver.

Background

On August 9, 2009, the employee executed a Recruitment Incentive Service Agreement entitling him to a recruitment incentive bonus (RIB) in the amount of \$5,000.00.¹ In the agreement, the employee agreed to serve with the Department of Defense for one year beginning December 7, 2009. Specifically, the employee agreed to the following:

I understand that if I fail to complete the one year of service, I will be required to repay the gross amount of the bonus on a monthly pro rata basis. The one year service begins with my reporting date of 07 Dec 2009.

On January 22, 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 the RIB payment 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 \$4,166.70.

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 the Recruitment Incentive Service Agreement was illegal. He contends it was in violation of both 5 U.S.C. § 5753(c)(2)(A), which specifies that the agreement shall include the method of payment, and 5 C.F.R. § 575.110(c), which requires that the agreement must specify the total amount of the incentive, the method of paying the incentive, and the timing and amounts of each incentive payment. He states that none of this information was included in the agreement he signed.

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 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

¹The employee received the \$5,000.00 in pay period ending December 19, 2009.

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 case, 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 is not satisfied. *See* DOHA Claims Case No. 2011-WV-081602.2 (December 15, 2011); and Comptroller General decision B-200113, Feb. 13, 1981.²

The employee contends that because the agreement he signed did not contain the statutorily prescribed terms as set forth under 5 U.S.C. § 5753(c)((2)(A) and 5 C.F.R. § 575.110(c), it was not legal. Therefore, he argues that the RIB payment he received was an erroneous payment. First, the record only contains one page of the agreement signed by the employee, so it is unclear whether we have been furnished with the complete written agreement. Second, even if we could consider the debt for waiver, waiver would not be appropriate under the circumstances of this case. By signing the agreement, the employee was on notice that if he did not complete the one year of service, he would be required to repay the gross amount of the bonus on a monthly pro rata basis. *See* DOHA Claims Case No. 08092602 (October 23, 2008) and DOHA Claims Case No. 08011601 (January 23, 2008). Third, DFAS has made the determination that the employee is legally obligated to refund the balance of the RIB payment he received in excess of the amount attributable to his completed service. We have no authority to question DFAS’s determination on this issue. As explained in the appeal decision by the adjudicator, the employee should address this matter to the proper authorities. In this regard, if the employee wishes to contest the validity of the debt by disputing it and proving his entitlement to the payment, he should direct his contention to the Navy and DFAS. Generally, an appeal of a decision by the Navy and DFAS on his entitlement would be directed to OPM under 31 U.S.C. § 3702(a)(2). In addition, as noted above, OPM has the authority to prescribe regulations relating to the repayment of a RIB when the agreed-upon service period has not been completed.³

Conclusion

The employee’s request for relief is denied, and we affirm the September 21, 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.

²This case was decided under 10 U.S.C. § 2774 because the applicant for waiver was a military member. However, the standards for waiver under 10 U.S.C. § 2774 and 5 U.S.C. § 5584 are the same.

³Under 5 C.F.R. § 575.11(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 interest 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. 2011-WV-081602.2, *supra*.

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

