

KEYWORDS: Waiver of indebtedness, Bonus payments

DIGEST: 1. Under 10 U.S.C. § 2774(b)(2), we may not waive collection of erroneous payments to or on behalf of a service member if application for waiver is received after the expiration of five years immediately following the date on which the erroneous payments were discovered. 2. The unearned portion of service enlistment bonus payments may not be considered for waiver under 10 U.S.C. § 2774 because payment was proper when made

CASE NO: 2017-WV-112702.2

DATE: 09/10/2019

DATE: September 10, 2019

In Re:	)	
[REDACTED]	)	
Claimant	)	Claims Case No. 2017-WV-112702.2

**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

1. Under 10 U.S.C. § 2774(b)(2), we may not waive collection of erroneous payments to or on behalf of a service member if application for waiver is received after the expiration of five years immediately following the date on which the erroneous payments were discovered.

2. The unearned portion of service enlistment bonus payments may not be considered for waiver under 10 U.S.C. § 2774 because payment was proper when made.

**DECISION**

A former member of the U.S. Army requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2017-WV-112702, dated July 18, 2019.

**Background**

The member was in a no pay status due to his pre-trial military confinement from November 20, 2009, through June 20, 2010. Due to an administrative error, the member received active duty pay during the period November 2009 through July 2010 in the amount of \$20,936.70. On October 21, 2011, the member was separated from active duty and entitled to

receive pay and allowances in the net amount of \$8,578.09. Since the member had already been overpaid \$20,936.70, the Defense Finance and Accounting Service (DFAS) properly applied the \$8,578.09 to his debt reducing it to \$12,358.61.

In addition, at separation the member was also in debt in the amount of \$431.37 for the collection of a *pro rata* portion of a \$6,000.00 Selective Enlistment Bonus (SEB) for an eight-year service obligation in the Army. Thus, the member became indebted in the total amount of \$12,789.98 (\$12,358.61 + \$431.37).

The record reflects that after DFAS discovered the overpayment of the member's pay and allowances and his debt for the *pro rata* portion of his SEB, DFAS sent him a debt collection letter dated November 18, 2011. The member did not submit a written request for waiver of his debt until April 12, 2017.

In the appeal decision, the DOHA adjudicator upheld DFAS's determination that the member's request for waiver could not be considered because it was not submitted within the five-year statute of limitations as required by 10 U.S.C. § 2774(b)(2).

In his reconsideration request, submitted by his family, the member requests that DOHA review the case based on new information. He states that most of the charges against him that led to his bad conduct discharge from the Army were dropped. In addition, his discharge has since been upgraded by the Army Discharge Review Board. He attaches his new DD Form 214, *Certificate of Release from Active Duty*, dated August 2, 2018, reflecting that the characterization of his service has been upgraded to General, Under Honorable Conditions. The member states that he has now taken steps to request a further upgrade to a medical discharge. He includes information supporting his medical condition.

## Discussion

Section 2774 of title 10, United States Code, provides authority for waiving claims for erroneous payments of pay and certain 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 interests of the United States. However, Section 2774(b)(2) states that the Secretary concerned or head of the agency may not exercise his authority under this section to waive any claim if the application for waiver is received in his Office after the expiration of five years following the date on which the erroneous payments were discovered. This provision is implemented by DoD Instruction 1340.23 (February 14, 2006) § E5.6.<sup>1</sup>

In this case, the record reflects that DFAS sent the member a letter dated November 18, 2011, notifying him of the debt established against him. This letter advised the member of his minimum monthly installment payment and gave him information to contact DFAS for assistance. The member suggests that because of his medical condition, incapacity or illness at the time, he did not know about the debt established against him. However, for the issue of time limitations under 10 U.S.C. § 2774(b)(2), the member's actual or imputed knowledge is

---

<sup>1</sup>The Instruction states three years, but it has been updated to five years.

irrelevant. As the adjudicator explained in the appeal decision, the period of limitations runs from the date that the erroneous payments were discovered by the administrative office, that is from the date it was definitely determined by an appropriate official that an erroneous payment had been made. Since the member's written waiver application was not received until April 2017, we have no authority to consider it. See DOHA Claims Case No. 2012-WV-030704.2 (May 30, 2012); DOHA Claims Case No. 2010-WV-110802.3 (August 11, 2011); and DOHA Claims Case No. 06070704 (July 17, 2006).

As explained by the adjudicator, even if the waiver request had been submitted prior to the expiration of the five-year statute of limitations, DOHA would still not have been able to consider the portion of the member's debt due to the collection of a *pro rata* portion of the SEB. While our Office has the authority to consider certain claims of the United States for waiver under the provisions of 10 U.S.C. § 2774, this statute specifically limits our authority to only claims which arose from an erroneous payment. We have consistently held that a claim arising from a properly paid SEB, which later must be recouped because of a member's early separation, is not a claim arising from an erroneous payment which may be considered for waiver under 10 U.S.C. § 2774. See DOHA Claims Case No. 2016-WV-050304.2 (October 25, 2016); and DOHA Claims Case No. 2013-WV-011101.2 (July 16, 2013).

Although waiver relief cannot be granted by DOHA to relieve the member of the collection of his debt, he may wish to consider the availability of relief under 10 U.S.C. § 1552, through the filing of a petition with the Army Board for Correction of Military Records (ABCMR).

### Conclusion

The member's request for reconsideration is denied. We affirm the appeal decision dated July 18, 2019. In accordance with DoD Instruction 1340.23 ¶ E8.15, this is the final administrative action of the Department of Defense in this matter on the member's waiver request under 10 U.S.C. § 2774.

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