

KEYWORDS: waiver of indebtedness

DIGEST: A debt cannot be considered for waiver under 10 U.S.C. § 2774 unless the payment was erroneous when made. In addition, educational expenses are not considered “pay and allowances” as the term is used under 10 U.S.C. § 2774.

CASENO: 2017-CL-060601.2

DATE: 08/31/2017

DATE: August 31, 2017

In Re: [REDACTED] Claimant)))))	Claims Case No. 2017-WV-060601.2
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**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

A debt cannot be considered for waiver under 10 U.S.C. § 2774 unless the payment was erroneous when made. In addition, educational expenses are not considered “pay and allowances” as the term is used under 10 U.S.C. § 2774.

DECISION

A member of the U.S. Air Force requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2017-WV-060601, dated July 21, 2017. In that decision, our office agreed with the Defense Finance and Accounting Service (DFAS) that the government’s claim against the member could not be considered for waiver.

Background

On August 2, 2009, the member signed a *Naval Reserve Officers Training Corps Four-Year Scholarship Service Agreement Contract*. Under the agreement, in exchange for the U.S. Navy providing the member with educational assistance in the Naval Reserve Officers Training Corps (NROTC) Program, the member agreed to obtain her nursing degree and serve in the Navy

as a commissioned officer. After approximately two years of school, the member had yet to be accepted into a nursing school program. A performance review board disenrolled the member from the NROTC Program in December 2011. As a result, the member was required to reimburse the government for the educational benefits she received during the period August 23, 2009, through January 6, 2012, in the amount of \$18,322.00.

In the appeal decision, the DOHA attorney examiner determined that the debt could not be considered for waiver because no erroneous payments were made. In her request for reconsideration, the member states that she has served three years and eight months on active duty as an enlisted member in the Air Force since October 2012. She provides evidence of her service. She maintains that she should not be held liable for the indebtedness because she has served two years of active enlisted service in the U.S. military.

Discussion

Under 10 U.S.C. § 2774, we cannot consider a debt for waiver unless it arose from an erroneous payment of pay and allowances. By definition, a payment must be erroneous when made if it is to be considered for waiver under 10 U.S.C. § 2774. If the payment was correct when made, we have no authority to relieve a member of her obligation to repay the government, regardless of subsequent events. *See* DOHA Claims Case No. 2016-WV-082203.2 (November 17, 2016); and DOHA Claims Case No. 03082101 (August 29, 2003). In addition, educational expenses are not considered “pay and allowances” as the term is used in 10 U.S.C. § 2774(a). *See* DOHA Claims Case No. 2014-WV-120803.2 (March 9, 2016).

In this case, there is no indication that the educational benefits paid to the member or on the member’s behalf were erroneous when made. In addition, educational benefits are not considered pay and allowances. Although we have no authority to consider the member’s debt for waiver, our decision does not preclude the member from seeking other available remedies. As the attorney examiner explained in the appeal decision, under 37 U.S.C. § 303a(e), the Secretary concerned (in this case, the Secretary of the Navy), has the discretion to determine if the member’s repayment of the educational expenses would be contrary to a personnel policy or management objective, would be against equity and good conscience, or would be contrary to the best interests of the United States. Thus, the member may wish to request that the Secretary of the Navy relieve her from recoupment of the educational expenses. *See* paragraph 020303 of Volume 7A of the DoD Financial Management Regulation – *Military Pay Policy - Active Duty and Reserve Pay*.¹

¹Under paragraph 020303, the Secretary of the Navy has the authority to make repayment determinations. We have been advised that the Secretary of the Navy has delegated its authority under this paragraph to the Board for Correction of Naval Records (BCNR). Information on petitioning the BCNR can be found online at <http://www.secnav.navy.mil/mra/bcnr/Pages/home.aspx>.

Conclusion

The member's request for reconsideration is denied, and we affirm the appeal decision dated July 21, 2017. In accordance with the Department of Defense Instruction 1340.23 ¶ E8.15, this is the final administrative action of the Department of Defense concerning the member's request for waiver in this matter.

Signed: Catherine M. Engstrom

Catherine M. Engstrom
Chairman, Claims Appeals Board

Signed: Charles C. Hale

Charles C. Hale
Member, Claims Appeals Board

Signed: William S. Fields

William S. Fields
Member, Claims Appeals Board