

KEYWORDS: Waiver of Indebtedness

DIGEST: The unearned portion of a Selective Re-enlistment Bonus may not be considered for waiver under 10 U.S.C. § 2774 because the payment was proper when made.

CASENO: 2010-WV-101303.2

DATE: 3/15/2011

DATE: March 15, 2011

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In Re: )  
          [REDACTED] ) Claims Case No.2010-WV-101303.2  
                                  )  
Claimant )

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**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

The unearned portion of a Selective Reenlistment Bonus may not be considered for waiver under 10 U.S.C. § 2774 because the payment was proper when made.

**DECISION**

A former member of the United States Army Reserve requests reconsideration of the January 31, 2011, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2010-WV-101303. In that decision, DOHA sustained the initial determination of the Defense Finance and Accounting Service (DFAS) that the member's debt could not be considered for waiver.

## **Background**

The record shows that on February 19, 2006, the member reenlisted in the United States Army Reserve for six years. As a result, he was entitled to receive a selective reenlistment bonus (SRB) in the gross amount of \$15,000.00, which he subsequently received. The member was discharged on April 12, 2007, prior to completing his term of enlistment. This required a recoupment of a *pro rata* portion of the SRB in the amount of \$12,291.67.

In the appeal decision, our Office concluded that the \$12,291.67 could not be considered for waiver because it did not represent an erroneous payment. The DOHA adjudicator explained that a debt arising from a properly paid SRB, which later must be recouped because of a member's early separation, is not an indebtedness arising from an erroneous payment which may be considered for waiver.

In his request for reconsideration, the member states that the Army forced him out. He states that his command's actions in forcing him to leave the Army were unethical and illegal. He states that he had no control over completing his obligation under his reenlistment contract. He states that he is willing to complete his obligation under the reenlistment contract anywhere in the world.

## **Discussion**

Although previous actions in this case were taken under 32 U.S.C. § 716 (the waiver statute applicable to National Guard members), the proper statute for consideration is 10 U.S.C. § 2774 (the waiver statute applicable to active duty and reserve members of the Uniformed Services). However, the standards for waiver are the same under both 32 U.S.C. § 716 and 10 U.S.C. § 2774. Under 10 U.S.C. § 2774, we have the authority to waive an indebtedness that arises from an erroneous payment of pay or allowances, to or on behalf of a member or former member, when collection would be against equity and good conscience and not in the best interests of the United States. A debt cannot be considered for waiver unless the payment was erroneous when made, and we have held that a debt arising from the unearned portion of an SRB does not arise from an erroneous payment, since the payment was proper when made. *See* DOHA Claims Case No. 09082801 (September 21, 2009), and DOHA Claims Case No. 07103007 (November 15, 2007).

In this case, the record indicates that the payment of SRB was proper when made, and the member has not presented any evidence to the contrary. The determinations of DFAS and our Office that the \$12,291.67 cannot be considered for waiver are proper. However, our decision concerning waiver does not preclude the member from pursuing other forms of relief. We note that under 37 U.S.C. § 303a(e), the Secretary concerned (here, the Secretary of the Army), may establish by regulations, procedures for determining the amount of the repayment required and

the circumstances under which an exception to the required repayment may be granted.

### **Conclusion**

The member's request for relief is denied, and we affirm the January 31, 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 member's waiver request under 10 U.S.C. § 2774.

Signed: Michael D. Hipple

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Michael D. Hipple  
Chairman, Claims Appeals Board

Signed: Jean E. Smallin

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Jean E. Smallin  
Member, Claims Appeals Board

Signed: Catherine M. Engstrom

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Catherine M. Engstrom  
Member, Claims Appeals Board