

KEYWORDS: Waiver of Indebtedness

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

CASENO: 2011-WV-062701.2

DATE: 9/08/2011

DATE: September 8, 2011

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In Re: )  
          [REDACTED] ) Claims Case No. 2011-WV-062701.2  
                                  )  
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 payment was proper when made.

**DECISION**

A former member of the U.S. Navy requests reconsideration of the July 27, 2011, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2011-WV-062701. In that decision, DOHA concluded that the claim against the member in the amount of \$2,866.08 could not be considered for waiver under 10 U.S.C. § 2774 because it did not arise from an erroneous payment.

**Background**

On October 10, 2007, the member reenlisted in the Navy for a period of 36 months. At that time, the member had an unserved obligation from a prior enlistment of six months.

As a result, she was entitled to receive a Selective Reenlistment Bonus (SRB) for 30 months in the gross amount of \$17,311.87, which she subsequently received. On May 10, 2010, the member was discharged prior to completing her term of enlistment. As a result, the member became liable for recoupment by the Navy for a *pro rata* portion of the SRB in the amount of \$2,866.08.

In the appeal decision, our Office concluded that the \$2,866.08 could not be considered for waiver because it did not represent an erroneous payment. The DOHA adjudicator explained that a claim arising from a properly paid SRB, 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.

In her reconsideration request, the member does not dispute that she was correctly paid the SRB, and she does not dispute that she separated five months before she completed the term of her enlistment. However, she states that this is her third attempt to obtain waiver of the indebtedness. She states that she relied on her Personnel Support Detachment (PSD) to provide her with accurate information about her separation. She states that she went to PSD for guidance and proper processing of her separation. She never intended to separate from the Navy with so much debt. She states that if her PSD had done its job and properly informed her, she would have never taken so much leave prior to her separation. Finally, she states that in the appeal decision, the DOHA adjudicator did not view her as having a financial hardship.

### **Discussion**

Under 10 U.S.C. § 2774, we have the authority to waive collection of erroneous payments of pay and allowances to a member or former member if collection would be against equity and good conscience and not in the best interest of the United States, provided there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the member. 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);<sup>1</sup> DOHA Claims Case No. 08092602 (October 23, 2008); DOHA Claims Case No. 07103007 (November 15, 2007); Comptroller General decisions B-261958, Nov. 8, 1995; B-259696, Jan. 25, 1995; and B-254196, Dec. 23, 1993.

The member seeks waiver relief under 10 U.S.C. § 2774, and 10 U.S.C. § 2774(a) specifically requires "an erroneous payment of any pay or allowances . . . to or on behalf of a

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<sup>1</sup>This decision involved waiver under 32 U.S.C. § 716 (the waiver statute applicable to members of the National Guard). The standards for waiver are the same under 10 U.S.C. § 2774 (the waiver statute applicable to active duty and reserve members of the Uniformed Services).

member or former member of the uniformed services” as a condition for applying the statute. In this case, the SRB payment was proper when made, and the member does not dispute this fact. Therefore, the unearned portion of the member’s SRB cannot be considered for waiver under 10 U.S.C. § 2774, because the debt did not arise from an erroneous payment. *See* DOHA Claims Case No. 09082801, *supra*.

As explained by the DOHA adjudicator in the appeal decision, even if we could consider the SRB payment for waiver, financial hardship is not a factor for consideration in determining whether waiver is appropriate. However, DFAS has the authority to arrange a repayment plan which takes any hardship into account. *See* DOHA Claims Case No. 07103007, *supra*.

Although we have no authority to consider the unearned portion of an SRB for waiver because it does not constitute an erroneous payment, our decision does not preclude the member from seeking other available remedies. We note that 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 unearned portion of the SRB is appropriate based on whether repayment 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.<sup>2</sup> The member may wish to pursue this remedy with the Secretary of the Navy.

### **Conclusion**

The member’s request for relief is denied, and we affirm the July 27, 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: Jean E. Smallin

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Jean E. Smallin  
Chairman, Claims Appeals Board

Signed: Catherine M. Engstrom

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Catherine M. Engstrom  
Member, Claims Appeals Board

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<sup>2</sup>Repayment of the SRB is currently covered by Chapter 2, Volume 7A of the DoD Financial Management Regulation – Military Pay Policy and Procedures – Active Duty and Reserve Pay, DoD 7000.14R (DoDFMR). Paragraph 0202 sets forth conditions under which repayment of the SRB will not be sought.

Signed Natalie Lewis Bley

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Natalie Lewis Bley  
Member, Claims Appeals Board