

KEYWORDS: waiver of indebtedness; Enlisted Affiliation Bonus (EAB)

DIGEST: The former member's unearned Enlisted Affiliation Bonus may not be considered for waiver under 32 U.S.C. § 716 because payment was proper when made.

CASENO: 2012-WV-031303.2

DATE: 5/14/2012

DATE: May 14, 2012

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| In Re:     | ) |                                  |
|            | ) |                                  |
| [REDACTED] | ) | Claims Case No. 2012-WV-031303.2 |
|            | ) |                                  |
|            | ) |                                  |
| Claimant   | ) |                                  |

**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

The former member's unearned Enlisted Affiliation Bonus may not be considered for waiver under 32 U.S.C. § 716 because payment was proper when made.

**DECISION**

A former member of the Army National Guard of the United States (ARNG) requests reconsideration of the April 5, 2012, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2012-WV-031303. 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**

On February 9, 2006, the member enlisted in the ARNG upon discharge from active Army service for a period of four years, three months and 12 days. Under the authority of 37 U.S.C. § 308c, he was eligible to receive an Enlisted Affiliation Bonus (EAB) in the gross amount of \$20,000.00, if he was affiliated with an ARNG unit for six years. On May 30, 2006, he received the first EAB installment in the amount of \$10,000.00. The record reflects that the member failed to report to his gaining state ARNG unit. On April 23, 2007, the member separated from the ARNG. Since he separated from the ARNG prior to fulfilling the six-year affiliation period required for the EAB entitlement, recoupment of the EAB in the amount of \$10,000.00 was required.

In the appeal decision, our Office concluded that the \$10,000.00 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 EAB, 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 32 U.S.C. § 716.

In his reconsideration request, the member states that he should be given credit for the time he served in the ARNG from February 2006 until his discharge on April 23, 2007. He notes that the members in the decisions cited by the adjudicator in the appeal decision all received credit for their service time. In addition, he requests information on how to file a request for remission of the debt.

### **Discussion**

Under 32 U.S.C. § 716, we have the authority to waive a claim of the United States against a member or former member of the National Guard for erroneous payments of pay and allowances if collection would be against equity and good conscience and not in the best interests of the United States. Therefore, our waiver authority applies only to claims arising out of "erroneous" payments. A claim arising from a properly paid enlistment bonus which must be recouped due to the member's failure to complete the enlistment period, is not a claim arising out of an erroneous payment which may be considered for waiver. *See* DOHA Claims Case No. 2010-WV-101303.2 (March 15, 2011); DOHA Claims Case No. 09082801 (September 21, 2009); DOHA Claims Case No. 06053038 (June 2, 2006); Comptroller General decisions B-261958, Nov. 8, 1995; B-259696, Jan. 25, 1995; and B-254196, Dec. 23, 1993.

The member seeks relief under 32 U.S.C. § 716. Under this statute, subsection (a) specifically requires "an erroneous payment of any pay or allowances . . . to or on behalf of a member or former member of the National Guard" as a condition for applying the statute. In this case, the EAB payment was proper when made. Therefore, the member's EAB cannot be considered for waiver under 32 U.S.C. § 716, because the debt did not arise from an erroneous payment. *See* DOHA Claims Case No. 09082801, *supra*.

The member was not given any credit from February 2006 through April 23, 2007, because the ARNG Bureau determined that the member never reported to his gaining state

ARNG unit.<sup>1</sup> This is reflected on the member's *Report of Separation and Record of Service*, NGB Form 22. In addition, the orders discharging him from the ARNG state that the reason for his discharge is that he was a "no show" and that termination of his affiliation bonus is required. Although the orders are dated April 27, 2007, they state that the effective date of termination is the date of assignment to the National Guard. Since the member never reported to his unit, he did not complete any time of service of the required six years of affiliation. Thus, recoupment of the total amount he received for EAB was required.<sup>2</sup>

Although we have no authority to consider the unearned portion of an EAB 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 Army or the appropriate National Guard authority), has the discretion to determine if the member's repayment of the unearned portion of the EAB 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>3</sup> The member may wish to pursue this remedy with the Secretary of the Army through his state's Army National Guard chain of command.

If the member wishes to pursue his claim as a remission under the authority of 10 U.S.C. § 4837, he may do so in accordance with Army Regulation (AR) 604-4.

## Conclusion

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<sup>1</sup>Although the member contends that he reported to three drills with his ARNG unit, his Military Master Pay Account (MMPA) records do not reflect this.

<sup>2</sup>Specifically, the member agreed to the following in his enlistment contract: "I am eligible for an Affiliation Bonus by affiliating from AD or Individual Ready Reserve (IRR) status into an ARNG unit for 6 years in the amount of \$20,000.00."

<sup>3</sup>Repayment of the EAB is currently covered by Volume 7A of the DoD Financial Management Regulation - *Military Pay Policy and Procedures - Active Duty and Reserve Pay*, DoD 7000.14R (DoDFMR). Chapter 2 sets forth conditions under which repayment of the EAB will or will not be sought. The Secretary's authority cited above to make a case-by-case determination is also stated in Chapter 2 at paragraph 20203.E.

The member's request for relief is denied, and we affirm the April 5, 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 member's waiver request under 32 U.S.C. § 716.

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

Signed: Natalie Lewis Bley

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Natalie Lewis Bley  
Member, Claims Appeals Board