

KEYWORDS: Waiver of Indebtedness

DIGEST: In order to be considered for waiver under 5 U.S.C. § 5584, a debt must arise from an erroneous payment of pay or allowances.

CASENO: 2012-WV-082710.2

DATE: 10/23/2012

DATE: October 23, 2012

In Re:)	
[REDACTED])	Claims Case No. 2012-WV-082710.2
Claimant)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

In order to be considered for waiver under 5 U.S.C. § 5584, a debt must arise from an erroneous payment of pay or allowances.

DECISION

A former service member requests reconsideration of the appeal decision, dated October 2, 2012, of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2012-WV-082710. In that decision, this Office determined that the claimant’s request for waiver of the claim of \$189,432.14 could not be considered under 5 U.S.C. § 5584.

Background

The claimant received inpatient medical care at Landstuhl Regional Medical Center (LRMC), Germany, from March 9, 2007, through May 25, 2007. He incurred medical charges in the amount of \$189,432.14. LRMC initiated collection action against the claimant for the amount.

The claimant disputes that he should be indebted for the charges for the medical care. He states that he is a veteran; and while he received the medical care, the record indicates he was

60% disabled. In his request for reconsideration, he contends that he is now a 100% service-connected disabled veteran. The claimant contends that he, as a veteran, should not have to pay for treatment received from a military doctor and hospital. The claimant also questions why the notices for his bill were initially sent to an incorrect address, and in care of a distant sister. He states he only became aware of the debt when his pay was garnished five years after the medical care. The claimant indicates that repayment of the debt is a financial hardship.

Discussion

Title 5, U.S.C. § 5584, provides authority for waiving claims for erroneous payment of pay and allowances made to specified federal employees, if collection of the claim would be against equity and good conscience and not in the best interests of the United States. Generally, these criteria are met by a finding that the claim arose from administrative error with no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employees or any other person having an interest in obtaining the waiver.

The medical care in question occurred from March through May 2007. A review of the claimant's DD Form 2789, *Waiver/Remission of Indebtedness Application*, dated January 11, 2012, reflects in Block 6 that he separated from service and his DOS [date of separation] was "30102000" [October 30, 2000]. The claimant indicates in the file that he served thirteen and one-half years. The claimant was a former military member, *i.e.*, already separated from the service, during the period that he received the medical care in question at LRMC. Thus, for the purposes of this waiver request, he falls into the category of civilian. Further, there is no indication that he was a federal employee, or that the debt was the result of the claimant erroneously receiving pay and allowances while on active duty or as a retired military member.

The record shows that the claimant was admitted and received inpatient medical care at a military treatment facility (MTF) for 77 days as a Civilian Emergency (CE). A CE is generally defined as an individual who is not a beneficiary of the Military Healthcare System, and not otherwise entitled to care at a MTF, but who presents to the MTF for emergency treatment or for acute care. The CE patient has no entitlement to MTF care and is entirely responsible financially for the cost of any care provided. Although the Emergency Medical Treatment and Active Labor Act (EMTALA) requires hospitals to treat emergency cases even if the patient cannot afford to pay, hospitals are still allowed to bill patients and their insurers for care that is provided. *See* DoD 6010-15M, *Military Treatment Facility Uniform Business Office (UBO) Manual*, (November 9, 2006), and DoD UBO User Guide, July 10, 2009. Federal law provides that civilians that are presented to a MTF for emergency or acute care are treated as required by EMTALA. *See* 42 U.S.C. § 1395dd, 42 CFR 489.24.¹

The claimant should address any concerns he has regarding the length of time it took for the debt to reach him to LRMC, or DFAS Out of Service Debt Customer Service Department.

¹ Although MTFs are not directly subject to the requirements of the EMTALA, they all elect to follow this law. *See* B-284671, March 13, 2000, Subject: Military Treatment Facilities: Emergency Department Utilization, GAO/HEHS-00-63R Military Emergency Departments.

This Office has no authority over the manner in which a debt is collected. The delay in presenting the debt makes it no less valid.

Concerning the claimant's statement that the debt is a financial hardship, this Office has consistently held that financial hardship is not a factor for consideration in determining whether waiver is appropriate. *See* Department of Defense Instruction 1340.23 (hereinafter Instruction), *Waiver Procedures for Debts Resulting from Erroneous Pay and Allowances*, ¶ E4.1.7 (February 14, 2006). The claimant may request that DFAS take such consideration into account in arranging repayment, however, such consideration is at DFAS' discretion. *See* DOHA Claims Case No. 2009-WV-042405.3 (April 14, 2010).²

Conclusion

The claimant's request for reconsideration is denied, and we affirm the October 2, 2012, appeal decision. In accordance with the Instruction, ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

///Original Signed///

Jean E. Smallin
Chairman, Claims Appeals Board

///Original Signed///

Catherine M. Engstrom
Member, Claims Appeals Board

///Original Signed///

Natalie Lewis Bley
Member, Claims Appeals Board

² The employee may seek debt forgiveness under the Debt Collection Act and appropriate regulations. He may make an Application for Financial Hardship through DFAS to the Department of Justice. His file should contain a completed U.S. Department of Justice Financial Statement of Debtor. He should contact DFAS for assistance and the appropriate forms.

