

DATE: July 16, 2013

In Re:

[REDACTED]

Claimant

)
)
) Claims Case No. 2013-WV-011101.2
)
)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

The unearned portion of a selective enlistment bonus (SEB) may not be considered for waiver under 10 U.S.C. § 2774 because payment was proper when made.

DECISION

A former member of the United States Army requests reconsideration of the June 18, 2013, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2013-WV-011101. In that decision, this Office determined that the former member's debt in the amount of \$4,242.39 was not an erroneous payment and, therefore, cannot be considered for waiver.

Background

The record shows that the member reenlisted in the U.S. Army for a period of three years on July 15, 2008. As a result, he was entitled to a selective enlistment bonus (SEB), which he subsequently received in the gross amount of \$15,000.00. However, on March 2, 2010, the member was discharged from the Army. Since the member separated from the Army prior to the completion of his enlistment contract and the end of his obligated service, recoupment of a pro rata portion of the SEB in the amount of \$5,191.42 was required. This was the initial amount of the debt. At the time of the member's discharge, he was entitled to receive a final separation allowance in the net amount of \$1,623.83, which represented two days of pay and allowances, a clothing allowance, and 34.5 days of lump sum leave. The final separation allowance was

reduced by forfeiture under the Uniform Code of Military Justice (USMJ) in the amount of \$674.80. Thus, the amount of his indebtedness was \$4,242.39.

The member requests reconsideration of the appeal decision. The member states that he requests the debt be cleared from his name. He states that he suffers from bi-polar disorder, and this condition has led to long periods of unemployment with no opportunity to pay his debts. He believes he may have had this condition when he entered the military and the condition was overlooked in order to achieve recruitment goals. He also states that he has applied for disability from the Social Security Administration and has filed a claim with the U.S. Department of Veteran Affairs. In seeking reconsideration, the member also maintains that this debt is causing him serious financial hardship.

Discussion

Title 10, United States Code, § 2774, provides authority for waiving claims for erroneous payments of pay and certain allowances made to or on behalf of members or former members of the uniformed services, if collection of the claim would be against equity and good conscience and not in the best interests of the United States provided there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the member or any other person having an interest in obtaining the waiver. Our Office has consistently held that the waiver authority provided by 10 U.S.C. § 2774 applies only to claims arising out of erroneous payments, and not to payments which are valid when made. We have further held that a claim arising from a properly paid SEB, 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. *See* DOHA Claims Case No. 2012-WV-030203.2 (May 17, 2012); DOHA Claims Case No. 2012-WV-031303.2 (May 14, 2012); DOHA Claims Case No. 08081206 (August 14, 2008); and DOHA Claims Case No. 07103007 (November 15, 2007).

Although we have no authority to consider the unearned portion of a SEB 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), has the discretion to determine if the member's repayment of the unearned portion of the SEB 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. The member may wish to pursue this remedy with the appropriate authorities. *See* DOHA Claims Case No. 2008-WV-081106.3 (April 5, 2011); DOHA Claims Case No. 2010-WV-101303.2 (March 15, 2011); and DOHA Claims Case No. 09082801 (September 21, 2009). While the member refers to remission in his letter, this Office has no authority over remissions.

The member's applications for disability compensation to other government agencies have no effect on this request for waiver. Additionally, as to the member's request that waiver be granted due to financial hardship, please note that a member's financial ability or inability to refund the amount of debt is not a factor in determining whether waiver is appropriate. However, while financial hardship does not provide a basis for waiver, the Defense Finance and Accounting Service (DFAS), at its own discretion, may take hardship appropriately into account

when arranging a repayment plan. *See* DOHA Claims Case No. 2008-WV-081106.3 *supra*; DOHA Claims Case No. 2010-WV-101303.2, *supra*; and DOHA Claims Case No. 09082801, *supra*.

Conclusion

The member's request for relief is denied and we affirm the appeal decision of June 18, 2013. In accordance with the Department of Defense Instruction 1340.23 ¶ E8.15, this is the final administrative decision of the Department of Defense concerning the member's request for waiver in this matter.

///Original Signed///

Jean E. Smallin
Chairman, Claims Appeals Board

///Original Signed///

Catherine M. Engstrom
Member, Claims Appeals Board

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Natalie Lewis Bley
Member, Claims Appeals Board