

DATE: March 11, 2014

In Re:)

[REDACTED])

) Claims Case No. 2013-WV-032603.2

Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

The unearned portion of an enlistment 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 United States Navy, through his mother, requests reconsideration of the February 7, 2014, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2013-WV-032603. In that decision, DOHA concluded that the claim against the member in the amount of \$8,544.74 could not be considered for waiver under 10 U.S.C. § 2774 because it did not arise from an erroneous payment.

Background

On August 18, 2009, the member enlisted in the Navy. As part of his enlistment contract, he was required to perform eight years of service and as a result, was entitled to receive an enlistment bonus for source rate (EBSR) in the amount of \$15,000.00, which he subsequently received in September 2010. However, on May 5, 2011, the member separated from the Navy prior to completing his term of enlistment. As a result, the member became liable for recoupment by the Navy for a *pro rata* portion of the EBSR in the amount of \$8,562.50. Credits due the member reduced his EBSR debt to \$8,544.74.

In the appeal decision, the DOHA adjudicator concluded that the \$8,544.74 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 enlistment bonus, 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 his reconsideration request, the member acknowledges that DOHA has no authority over the issues concerning his discharge from the Navy. However, he submits various letters from the Navy regarding an open investigation by the Naval Inspector General (IG) into the circumstances surrounding his service with the Navy. He states that although the Naval IG investigation was completed, he has received no further information from the Navy. Based on the letters submitted, he requests that DOHA reconsider its decision.

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 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 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 enlistment bonus, 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 an enlistment bonus 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 enlistment bonus 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.¹ 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).

¹We note that the Secretary of the Navy has delegated its authority under 37 U.S.C. § 303a(e) to the Board for Correction of Naval Records to render, in the Board's discretion, a case-by-case determination that a member's repayment of a bonus is contrary to a personnel policy or management objective; against equity and good conscience; or contrary to the best interest of the United States. *See* DoD 7000.14-R, Volume 7A, Chapter 2, paragraph 0202.

The narrow issue that we are concerned with here is whether the member's debt can be considered for waiver under the provisions of 10 U.S.C. § 2774. Our decision in this case does not preclude the member from continuing to address the issues he has raised with the Naval IG concerning his discharge. See DOHA Claims Case No. 08052701 (May 30, 2008).² We have no involvement in those sorts of investigations and have no right or reason to access the results of such investigations. The member should contact the Naval IG concerning those matters.

Conclusion

The member's request for relief is denied and we affirm the appeal decision of February 7, 2014. 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.

Signed: Jean E. Smallin

Jean E. Smallin
Chairman, Claims Appeals Board

Signed: Catherine M. Engstrom

Catherine M. Engstrom
Member, Claims Appeals Board

Signed: Gregg A. Cervi

Gregg A. Cervi
Member, Claims Appeals Board

²This decision was decided under 5 U.S.C. § 5584 because the applicant for waiver was a civilian employee. However, the standards for waiver under 10 U.S.C. § 2774 and 5 U.S.C. § 5584 are the same.