

DATE: August 27, 2014

In Re:)

[REDACTED])

) Claims Case No. 2013-WV-053001.2

Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

While the Defense Office of Hearings and Appeals (DOHA) has the authority to consider requests for waiver under the provisions of 10 U.S.C. § 2774, this statute specifically limits our authority to cases which arise from erroneous payments.

DECISION

A retired member of the U.S. Army requests reconsideration of the August 14, 2014, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2013-WV-053001. In that decision, this Office determined that a debt made up of unpaid Survivor Benefit Plan (SBP) premiums could not be considered for waiver, since the debt did not arise from erroneous payments.

Background

On December 15, 1994, the Army released the member from duty because of physical disability and placed her on the Temporary Disability Retired List (TDRL) effective February 7, 1995. She began receiving temporary retired pay at a disability percentage of 30%. On September 13, 1996, the member was placed on the Permanent Disability Retired List (PDRL). On January 12, 1995, the member filed a DD Form 2656, *Data for Payment of Retired Personnel*, in which she requested spouse-only full SBP coverage. Although the member indicated on the DD Form 2656 that she had two dependent sons, she did not request SBP coverage for them. The member elected to have the SBP premium payments deducted from her retired pay. In early 1996, the member began receiving disability compensation from the Department of Veterans Affairs (VA). Since her VA compensation exceeded the amount of her retired pay, she was required to directly remit SBP payments to the Defense Finance and

Accounting Service (DFAS)—Military Retired Pay from January 1996 through October 2011 in the amount of \$9,899.56. However, during that period, the member did make intermittent payments for SBP during the period March 1996 through March 2003 in the amount of \$4,115.19. This reduced the amount for which the member was liable to \$5,784.37.¹ On May 27, 1999, the member was found unemployable due to her service-connected disability and was therefore entitled to receive VA disability compensation at the 100% rate. The member subsequently requested to withdraw from SBP, and DFAS terminated her coverage effective November 1, 2011.

Discussion

Title 10, U.S.C., § 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 would not be in the best interests of the United States.

While our Office has the authority to consider certain claims of the United States for waiver under the provisions of 10 U.S.C. § 2774, this statute specifically limits our authority to consider claims which arise from erroneous payments. As the member was informed in the appeal decision, since she was responsible for remitting direct payments for SBP coverage in the amount of \$5,784.37, this debt was not caused by the erroneous payment of pay and allowances made to her. Because the overpayment does not represent an erroneous payment, this Office has no authority to consider it for waiver under the provisions of 10 U.S.C. § 2774. *See* DOHA Claims Case No. 08012801 (February 4, 2008); DOHA Claims Case No. 07091401 (September 17, 2007); DOHA Claims Case No. 99042101 (June 24, 1999); and Comptroller General decision B-244596, July 22, 1991.

The member states that she is in poor health, and repaying this debt is also causing her financial hardship. As noted, we simply have no authority to consider this debt for waiver. *See* Department of Defense Instruction (hereinafter Instruction) 1340.23 *Waiver Procedures for Debts Resulting from Erroneous Pay and Allowances* (February 14, 2006) ¶ E4.1.1.

As the adjudicator noted in the appeal decision, while this Office does not have the authority to waive this debt, the Secretary of the Military Department concerned (in this case, the Secretary of the Army) has the authority to revoke an election of SBP when necessary to correct an administrative error. *See* 10 U.S.C. § 1454; and Department of Defense Financial Management Regulation (DoDFMR), Military Pay Policy—Retired Pay, Volume 7B, Chapter 43, ¶ 4304. Further, the Secretary of the Army, under ¶ 430606, has the authority to correct any SBP election or change of revocation of a SBP election when the Secretary considers it necessary to correct an administrative error. If the member wishes to pursue this remedy by filing a request to correct her record to reflect that SBP coverage terminated at an earlier date than November 1, 2011, she should submit this request to the Secretary of the Army. The

¹ As of the date the case was sent to DOHA, interest in the amount of \$2,348.37 had accrued on the debt amount.

member should use the DD Form 2789, *Waiver/Remission of Indebtedness Application*, and under the type of case, select “Remission.”² In this regard, under the authority of 10 U.S.C. § 4837, the Secretary of the Army has the authority to remit or cancel any part of the indebtedness of a member if the Secretary considers such action to be in the best interests of the United States.

Again, as the adjudicator noted in the appeal decision, the member may wish to determine if her disabilities may make her eligible for Combat Related Special Compensation (CRSC). The member may seek information from DFAS—Retired Pay, her nearest VA office, or online.³

Conclusion

The request for reconsideration is denied, and the appeal decision, dated August 14, 2014, is affirmed. In accordance with the Instruction ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

Jean E. Smallin
Chairman, Claims Appeals Board

Gregg A. Cervi
Member, Claims Appeals Board

Natalie Lewis Bley
Member, Claims Appeals Board

² The DD Form 2789 can be found at <http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd2789.pdf>

³ Information about CRSC can be found by calling 1-800-321-1080 or online at <http://www.dfas.mil/retiredmilitary/disability/crsc.html>.