

DATE: November 6, 2014

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In Re:

[REDACTED]

Claimant

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Claims Case No. 2013-WV-110407.2

**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

Section 716 of title 32, United States Code, 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 National Guard. While our Office has the authority to consider claims of the United States for waiver under the provisions of 32 U.S.C. § 716, this statute specifically limits our authority to consider for waiver only claims which arose from an erroneous payment. If the payments were correct when made, this Office has no authority to relieve a member of his obligation to repay the government.

**DECISION**

A member of the Air National Guard requests reconsideration of the appeal decision dated October 2, 2014, of the Defense Office of Hearings and Appeals (DOHA), in DOHA Claim No. 2013-WV-110407. In that decision, this Office found that waiver of repayment of a *pro rata* portion of an enlistment bonus in the amount of \$6,944.44 could not be considered.

**Background**

The member enlisted in the Air National Guard (ANG) on October 21, 2008, for eight years. The member signed an *Air National Guard Non-Prior-Service (NPS) Enlistment Bonus Written Agreement* (National Guard Bureau Form 36-8) which reflects that that the member is “enlisting in the ANG for a period of not less than three (6) years to be trained in the Air Force Specialty Code (AFSC) 6F051, which is approved for an enlistment bonus,” effective October 21, 2008.<sup>1</sup> The member was entitled to receive an enlistment bonus in the amount of \$20,000 for

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<sup>1</sup> The Defense Finance and Accounting Service (DFAS) asserts that the “three (6) years” is a typographical error and should reflect six (6) years. This Office accepts this assertion since the record reflects that the member

the six-year obligation. However, the member transferred out of AFSC-6F051, prior to the date stipulated in his enlistment contract. As a result, recoupment of a *pro rata* portion of the reenlistment bonus in the amount of \$6,944.44 was required.

### **Discussion**

Section 716 of title 32, United States Code, 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 National Guard, 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.

While our Office has the authority to consider certain claims of the United States for waiver under the provisions of 32 U.S.C. § 716, this statute specifically limits our authority to waive only claims which arose from an erroneous payment. If the payments were correct when made, regardless of the subsequent events, we have no authority to relieve a member of his obligation to repay the government.

The member states that in August 2012 a full-time opportunity opened up in the Public Affairs office. He was advised that there would be a debt when he transferred; however, he believed that if he thereafter served for six months he would be able to retain the bonus. He states that when he received the debt letter, he immediately transferred back into his finance position. He states that he was only out of his finance position for two drill weekends. He states that today he is in good standing with the finance office, and he is enrolled in a leadership school to obtain further promotion. He requests that remission of the debt be approved.

In this case, the member contracted for six years (72 months) in the finance specialty (AFSC-6F051) to receive the enlistment bonus of \$20,000.00. He entered into the contract on October 21, 2008, and he moved out of the bonus specialty on September 6, 2012. Therefore, he completed 47 of the contracted months, which earned him \$13,055.56 of the bonus money. He owes the government \$6,944.44 for the amount of the contract he did not complete. The member stated he only missed two drill weekends, was brought back into the finance office and was continuing to serve there. However, that does not change the terms of the original enlistment bonus agreement under which he received payments. Since the enlistment bonus payments he received were proper when made, his claim cannot be considered under the provisions of the waiver statute, 32 U.S.C. § 716. *See* DOHA Claims Case No. 2011-WV-062701.2 (September 8, 2011); DOHA Claims Case No. 2010-WV-101303.2 (March 15, 2011); and DOHA Claims Case No. 09082801 (September 21, 2009).

Please note that under 37 U.S.C. § 303a(e) the Secretary concerned (in this case, the Secretary of the Air Force) may establish, by regulations, procedures for determining the amount of the repayment required under this subsection and the circumstances under which an exception to the required repayment may be granted. Also, if the member believes he should not be

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signed the *Enlistment/Reenlistment Document Armed Forces of the United States* (DD Form 4-1) which delineates that he is serving in the ANG for eight years, with six years of active service and two years in a reserve status. Additionally, the member has not made this matter an issue of contention.

indebted for the bonus, he can address his concern with the Air Force Board for Correction of Military Records. The member requests remission; however, this Office has no authority over remission requests. Additionally, the member checked “waiver” on his *Waiver/Remission of Indebtedness Application* (DD Form 2789). Should the member desire remission, he should refer to his service’s remission process as outlined in Air Force Instruction 36-3034, *Remission of Indebtedness*, dated November 21, 2013.

### **Conclusion**

The member’s request for relief is denied, and we affirm the October 2, 2014, appeal decision. In accordance with Department of Defense Instruction 1340.23 ¶ E8.15, this is the final administrative action of the Department of Defense concerning the member’s request for waiver under 32 U.S.C. § 716.

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Jean E. Smallin  
Chairman, Claims Appeals Board

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Catherine M. Engstrom  
Member, Claims Appeals Board

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Natalie Lewis Bley  
Member, Claims Appeals Board