

DATE: March 31, 2015

In Re:

[REDACTED]

Claimant

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Claims Case No. 2014-WV-120807.2

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

A waiver usually is not appropriate when a recipient knows, or reasonably should know, that a payment is erroneous. The recipient has a duty to notify an appropriate official, and to set aside the funds for eventual repayment to the Government.

DECISION

A member of the California Army National Guard requests reconsideration of the January 5, 2015, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2014-WV-120807. In that case, our Office determined that \$22,500.00 could not be considered for waiver, and an additional \$7,500.00 of the total debt of \$30,000.00 was denied.

Background

On March 5, 2005, the member reenlisted under the Army National Guard (ARNG) Select Reserve Incentive Program (SRIP) for a term of three years.¹ Under the reenlistment agreement, the member agreed to a three-year reenlistment in exchange for a \$7,500.00 lump-sum bonus payment. By signing the reenlistment agreement, the member acknowledged that she would be terminated from her bonus eligibility with recoupment if she accepted an Active Guard/Reserve (AGR) Title 10 or Title 32 tour effective on the date of her AGR orders. However, recoupment would not be required if she served at least six months of the incentive contract following the date of her bonus payment eligibility, which was March 5, 2005, the date she signed the reenlistment agreement. The member subsequently received the \$7,500.00 bonus payment on November 10, 2005. However, effective September 16, 2005, she accepted an

¹ On the Reenlistment/Extension Bonus Addendum, NGB Form 600-7-3-R-E, the member checked both a reenlistment for three years and a reenlistment for six years.

Active Guard/Reserve (AGR) tour. Therefore, the member was allowed to keep the \$7,500.00 she was paid because she had served six months on her incentive contract before accepting the AGR tour. However, due to an administrative error, on February 8, 2006, the member erroneously received another bonus payment in the amount of \$7,500.00.

Concurrent with her reenlistment in March 2005, the member signed a Student Loan Recoupment Program Addendum (SLRP), NGB Form 600-7-5-R-E, for loan repayment up to \$20,000.00. Specifically, the member acknowledged by signing the SLRP Addendum that her entitlement to loan repayment under the SLRP would be terminated if she accepted a Title 10 or Title 32 AGR tour. Since she accepted an AGR tour on September 16, 2005, she was no longer eligible to receive the Department of Defense's assistance with the repayment of her student loans under the SLRP. The Defense Finance and Accounting Service (DFAS) advised us that the member was paid \$24,000.00 in student loans, but was only entitled to \$1,500.00. The total claim for the SLRP is \$22,500.00.

Discussion

Section 2774 of title 10, 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 uniformed services, 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 member or any other person having an interest in obtaining the waiver.

In the appeal decision, the member was advised that the SLRP overpayment amount could not be considered for waiver because it did not arise from an erroneous payment of pay or allowances. The debt here did not arise from "pay or allowances" as that term is used in 10 U.S.C. § 2774(a) because educational expenses are not considered "pay or allowances." The member was advised that the debt could potentially be waived by the discretion of the Secretary of the Army under 37 U.S.C. § 303a(e). In her request for reconsideration, the member indicated that she understood that DOHA could not consider this portion of the debt for waiver and she would seek redress through the appropriate authority.

The member is seeking reconsideration of the overpayment of the \$7,500.00 for the reenlistment bonus. The member argues that the crux of the issue is whether she intended to extend her enlistment for three years or for six years. She agrees that there are inconsistencies in the NGB Form 600-7-3-R-E. She points out that there are several Oath of Extensions, DA Form 4836, in which she extends for periods of six years and three years. She also notes the SLRP Addendum which she uses not to argue the SLRP incentive, but to point out that one cannot receive the SLRP incentive unless one extends for six years. She states that she sought advice when she received the second payment of \$7,500.00 and was informed by the incentive program manager that she was entitled to the payment. The reenlistment bonus has an option that allowed the member to elect to extend for six years and receive a bonus payment of \$15,000.00. She argues since all the evidence points to the fact that she was attempting to enlist for six years she was entitled to the \$15,000.00 bonus, and it should have been processed in one payment. She

served the six years, and the only error is that the bonus was processed in two payments. The member also notes that it has been a decade since all of this occurred and it will cause a financial hardship for her family. She requests waiver in the interest of equity and good conscience.

Department of Defense Instruction (hereinafter Instruction) 1340.23 ¶ E4.1.4, states that a waiver is usually not appropriate when a recipient knows, or reasonably should know, that a payment is erroneous. The recipient has a duty to notify an appropriate official and to set aside funds for eventual repayment to the Government, even if the Government fails to act after notification. The member states she did contact finance officials, in the person of the incentive program manager, whom she has named in the record, which is expected of a prudent person. For purposes of this appeal, we accept the member's statement that she alerted the incentive program manager and that she received incorrect advice. Because both three years and six years were checked and because she received two identical payments, the member should have attempted to further document the correctness of the second payment. Our decisions and those of the Comptroller General have consistently held that there is no basis for waiver based on reliance on incorrect advice unless the official(s) providing the advice is/are identified and the member's version of events is corroborated in the written record by pay or disbursing officials with evidence of her statement(s) to them and their statement(s) to her. *See* DOHA Claims Case No. 2011-WV-022302.2 (October 28, 2011); DOHA Claims Case No. 09051302 (May 21, 2009); and DOHA Claims Case No. 02120917 (December 20, 2002). Such a record does not exist here.

The record shows that the member checked the reenlistment bonus for three years for \$7,500.00, which she received; and she worked the requisite six months to avoid recoupment for that payment. The second payment of \$7,500.00 is erroneous, and waiver is not appropriate under the circumstances. As to the member's claim of financial hardship, under the Instruction ¶ E4.1.7, financial hardship is not a factor for consideration in determining whether a waiver is appropriate. And finally, in response to her argument that this payment is a decade old, there is no limit on collecting debts owed to the Government.

Conclusion

The request for reconsideration is denied as to the payment of the reenlistment bonus of \$7,500.00; the payment of the SLRP was not considered and the member may pursue another avenue for that waiver. The appeal decision dated January 5, 2015, is affirmed as to the reenlistment bonus payment. In accordance with the Instruction, this is the final administrative decision of the Department of Defense in this matter as it relates to the reenlistment bonus.

///Original Signed///

Jean E. Smallin
Chairman, Claims Appeals Board

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William S. Fields
Member, Claims Appeals Board

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Natalie Lewis Bley
Member, Claims Appeals Board