

DATE: September 29, 2015

In Re:

[REDACTED]

Claimant

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Claims Case No. 2015-WV-032301.2

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

The government erroneously made payments on behalf of a former member of the California Army National Guard on her student loans under the Student Loan Repayment Program (SLRP). We cannot consider the member's resulting debt for waiver because educational expenses are not pay or allowances as the term is used in 32 U.S.C. § 716.

DECISION

A former member of the California Army National Guard requests reconsideration of the August 18, 2015, decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2015-WV-032301.

Background

On April 2, 2002, the member enlisted in the Army National Guard for at least six years with a concurrent contractual and statutory military service obligation of eight years. Pursuant to her enlistment, the member signed the Annex S to DD Form 4, *Student Loan Repayment Program Addendum Army National Guard of the United States* (Addendum). In this Addendum, the member indicated that she had one existing student loan in the amount of \$8,261.00. The Addendum stated that the repayment for qualifying loans under the Student Loan Repayment Program (SLRP) would not exceed \$10,000.00. The Addendum also stated that the portion that may be repaid annually on any qualifying loans would not exceed 15 percent (not to exceed \$1,500.00 per year) of the total of all loans or \$500.00, whichever is greater. The Defense Finance and Accounting Service (DFAS) advised our office that the Army subsequently made

payment on the member's student loans in the total amount of \$16,002.75, during the period April 30, 2003, through April 2, 2008.

DFAS later determined that the SLRP payments were subject to recoupment because the proper supporting loan documentation was not provided. In addition, DFAS found that even if the proper loan documentation was provided, under the Addendum, the member was only entitled to receive \$4,002.75 in repayment of her student loans. However, since the proper loan documentation was not provided, the total amount of the claim against the member is \$16,002.75.

In the decision dated August 18, 2015, the DOHA adjudicator advised the member that the recoupment of the SLRP payments could not be considered for waiver because they did not arise from erroneous payments of pay or allowances. The adjudicator explained that the debt did not arise from "pay or allowances" as that term is used in 32 U.S.C. § 716 because educational expenses are not considered "pay or allowances." The member was advised that the debt could potentially be waived at the discretion of the Secretary of the Army under 37 U.S.C. § 303a(e). The adjudicator also noted that the member was advised by the Army that she may be eligible for an Exception to Policy (ETP). The member was advised that she may file her ETP request with the Incentives Task Force (ITF). She was also advised that she may submit the missing supporting documentation absent from her personnel file with the ITF. It does not appear the member pursued these avenues of redress.

In her reconsideration request, the member states that she believes that although she remembers the paperwork being filled out for reimbursement of her student loan by the California National Guard's former Bonus and Incentive Manager, she believes that the funds were never received by her, her lender or the university she attended. She states that her personal bank records do not reflect any payments being deposited for student loan reimbursement. She further states that the lending institution and the university's financial records reveal no record of payments being made. She states that she was a victim of fraud and requests that we investigate the situation further. She attaches a press release from the Los Angeles Division of the Federal Bureau of Investigation dated May 30, 2012, concerning the sentencing of a former California National Guard Master Sergeant to 30 months in federal prison in a \$15 million false claims case. From the record evidence, this Master Sergeant was the former Bonus and Incentive Manager who filled out the member's paperwork under the SLRP.

Discussion

Our authority in this case is restricted to a consideration of whether the member's debt may be waived under 32 U.S.C. § 716. Under 32 U.S.C. § 716, we have the authority to waive claims of the United States only if they arise from erroneous payments of pay and allowances, and only if collection would be against equity and good conscience and not in the best interest of the United States.

The debt in this case cannot be considered for waiver because educational expenses do not constitute pay and allowances under 32 U.S.C. § 716. *See* DOHA Claims Case No. 2014-WV-120807.2 (March 31, 2015); and DOHA Claims Case No. 07101704 (October 30, 2007). As for the member's insistence that we investigate the circumstances surrounding her indebtedness, our office adjudicates cases on the written record which is provided to us by the component concerned and the member requesting waiver. We are not an investigative body and have no authority to investigate this matter. In addition, the establishment of a debt is a matter primarily for administrative determination, and our office will ordinarily not question a determination in the absence of clear error. *See* DOHA Claims Case No. 2013-WV-032603.2 (March 11, 2014); DOHA Claims Case No. 2013-WV-012902.2 (September 30, 2013);¹ and DOHA Claims Case No. 07101704, *supra*. However, the record contains vouchers reflecting payments made to the member's student loan lender and her university. If she wishes to contest the validity of her debt, she should contact her finance office and the Defense Finance and Accounting Service (DFAS). We realize that the individual mentioned in the FBI's press release admitted that she submitted claims to pay off members' loans, even though she knew the members were ineligible for loan repayment. Other cases with similar fact patterns to this member's case involving recoupment actions under the SLRP have been sent to our office. However, as explained above, we do not have the authority to waive recoupment of the student loan repayments. The member may wish to pursue other available remedies with the Secretary of the Army under 37 U.S.C. § 303a(e) or with the ITF.

Conclusion

The member's request for reconsideration is denied, and we affirm the decision dated August 18, 2015. In accordance with the 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 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: William S. Fields

William S. Fields
Member, Claims Appeals Board

¹This decision was decided under 5 U.S.C. § 5584 because the applicant for waiver was a civilian employee. However, the standards for waiver under 32 U.S.C. § 716 and 5 U.S.C. § 5584 are the same.