

DATE: October 20, 2016

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In Re: )  
          [REDACTED] )     Claims Case No. 2016-WV-030806.2  
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Claimant                            )  

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**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

The government erroneously made payments on behalf of a member of the Army National Guard on his 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 member of the Army National Guard (ANG) requests reconsideration of the August 4, 2016, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2016-WV-030806. In that decision, our office waived \$15,000.00 the member erroneously received for a reenlistment bonus (REB),<sup>1</sup> but determined that \$5,010.32 in student loans repayments could not be considered for waiver.

**Background**

On March 3, 2007, the member signed a six-year extension of his enlistment in the ANG. Pursuant to this extension, the member signed the Annex L to DD Form 4, *Student Loan Repayment Program Addendum Army National Guard of the United States* (Addendum). 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 \$5,010.32, during the period March 5, 2008, through May 13, 2009.

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<sup>1</sup>The DOHA adjudicator disagreed with the Defense Finance and Accounting Service’s denial of waiver of this portion of the claim. However, this amount is not in contention in the member’s reconsideration request since it has been waived.

DFAS later determined that the SLRP payments were subject to recoupment because the member was not duty qualified in the specific Military Occupational Specialty (MOS) required for him to receive the SLRP.

In the appeal decision dated August 4, 2016, 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).

In his reconsideration request, the member states that he held the correct MOS at the time he signed the SLRP documentation. He states that he provided the documentation reflecting his MOS many times and the forms can be found in his personnel folder. He also states that he knows of over 16,000 other soldiers in the same position.

### **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. 2015-WV-032301.2 (September 29, 2015); and DOHA Claims Case No. 07101704 (October 30, 2007).

We are aware of other cases with similar fact patterns to this member’s case involving recoupment actions under the SLRP. 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). We have been advised that the Secretary of the Army operates his authority under 303a(e) through the Army Board for Correction of Military Records (ABCMR). The ABCMR’s decisions involving SLRP recoupments can be found on their website at [http://boards.law.af.mil/ARMY\\_BCMR.htm](http://boards.law.af.mil/ARMY_BCMR.htm).

## Conclusion

The member's request for reconsideration is denied, and we affirm the decision dated August 4, 2016. 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

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Jean E. Smallin  
Chairman, Claims Appeals Board

Signed: Catherine M. Engstrom

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Catherine M. Engstrom  
Member, Claims Appeals Board

Signed: Natalie Lewis Bley

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Natalie Lewis Bley  
Member, Claims Appeals Board