

KEYWORDS: Waiver of Indebtedness

DIGEST: A debt cannot be considered for waiver under 10 U.S.C. § 2774 unless the payment was erroneous when made.

CASENO: 2016-WV-082203.2

DATE: 11/17/2016

DATE: November 17, 2016

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In Re:						
[REDACTED]						Claims Case No. 2016-WV-082203.2
Claimant						

**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

A debt cannot be considered for waiver under 10 U.S.C. § 2774 unless the payment was erroneous when made.

**DECISION**

A former member of the U.S. Navy Reserve requests reconsideration of the October 17, 2016, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2016-WV-082203. In that decision, our office agreed with the Defense Finance and Accounting Service (DFAS) that the government’s claim against the member could not be considered for waiver.

**Background**

On August 3, 2010, the member enrolled in the Navy Nurse Candidate Program (NCP) and signed a NCP Service Agreement (NCPSA). Under the NCPSA, the member was required to reenlist in the U.S. Navy Reserve for eight years. As a result of her enrollment in the NCP and reenlistment, she became entitled to receive an accession bonus (AB) in the gross amount of

\$10,000.00 and a continuation bonus (CB) in the amount of \$1,000.00 per month for each month she was enrolled as a full-time student for a maximum of 24 months of payment. By signing the NCPSA, the member acknowledged that she would be required to repay the full amount of any AB and CB she received if she failed to (1) complete the degree program in nursing or was dis-enrolled from the NCP for any reason other than medical; (2) accept an appointment as a Nurse Corps Officer following completion of her degree in nursing; (3) complete the obligated service required; or (4) become or remain licensed as a registered nurse pursuant to Navy instructions. The member subsequently received the \$10,000.00 AB during the period September 15, 2010, through February 20, 2011. During the period September 2010 through May 2011 the member received CB payments in the amount of \$9,433.33. However, on May 18, 2011, the member was dis-enrolled from the NCP; and on March 16, 2012, she separated from the U.S. Navy prior to completing the term of her reenlistment. As a result, the member was required to reimburse the government for the AB and CB payments she received in the amount of \$19,433.33 (\$10,000.00 + \$9,433.33).

In the appeal decision, the DOHA adjudicator determined that the debt could not be considered for waiver because no erroneous payments were made. In her request for reconsideration, the member states that she explained to her advisor about her medical issues. She states that her advisor told her to draft a letter requesting to be dis-enrolled from the NCP. The member states that she was told that she could repay any debt incurred with her service. She states that she immediately joined the Navy Reserve and never received a copy of her discharge, nor was she provided information about the debt she accrued. She did not know that she had to submit medical documentation at the time she requested to be dis-enrolled from the NCP in order not to incur a debt. She further states that she initially requested remission of the debt but was advised by DFAS to seek waiver of it.

### **Discussion**

We accept DFAS's statement of fact absent clear and convincing evidence to the contrary. *See* DOHA Claims Case No. 03082101 (August 29, 2003). The record reflects that the member was discharged on March 16, 2012. According to DFAS, the member had a break-in-service between the period she was dis-enrolled from the NCP and when she reenlisted in the Navy in June 2012. Since she did not complete her time in the NCP, recoupment was required for all funds paid to her while in the program. Application of 10 U.S.C. § 2774 to this debt does not depend on the circumstances surrounding the member's dis-enrollment from the NCP. Our authority in this case is restricted to a consideration of whether the member's debt may be waived under 10 U.S.C. § 2774. Under 10 U.S.C. § 2774, 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 interests of the United States, provided there is no evidence of fraud, fault, misrepresentation, or lack of good faith on the part of the member. By definition, a payment must be erroneous when made if it is to be considered for waiver under 10 U.S.C. § 2774. If the payment was correct when made, we

have no authority to relieve a member of her obligation to repay the government, regardless of subsequent events. *See* DOHA Claims Case No. 2011-WV-081602.2 (December 15, 2011).<sup>1</sup>

In this case, there is no indication that the AB and CB payments were erroneous when made. Although we have no authority to consider the member's debt for waiver, our decision does not preclude the member from seeking other available remedies. The member may wish to request that the Secretary of the Navy relieve her from the recoupment requirement pursuant to paragraph 0203 of Volume 7A of the DoD Financial Management Regulation – *Military Pay Policy - Active Duty and Reserve Pay*.<sup>2</sup>

### Conclusion

The member's request for reconsideration is denied, and we affirm the appeal decision dated October 17, 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

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<sup>1</sup>This case involved a civilian employee under 5 U.S.C. § 5584. However, the same waiver standards apply to military members seeking waiver under 10 U.S.C. § 2774.

<sup>2</sup>Under paragraph 0203, the Secretary of the Navy has the authority to render determinations that repayment action will not be pursued in situations in which the member's inability to fulfill specified service conditions related to a pay or benefit is due to circumstances determined reasonably beyond the member's control. We have been advised that the Secretary of the Navy has delegated its authority under this paragraph to the Board for Correction of Naval Records (BCNR). Information on petitioning the BCNR can be found online at <http://www.secnav.navy.mil/mra/bcnr/Pages/home.aspx>.