

DATE: August 29, 2003

In Re:

REDACTED

Claimant

Claims Case No. 03082101

CLAIMS APPEALS BOARD 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 service member appeals the July 23, 2003, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 03042202, in which DOHA agreed with the Defense Finance and Accounting Service (DFAS) that the government's claim against a former member in the amount of \$16,729.40 may not be considered for waiver under title 10, United States Code, Section 2774 (10 U.S.C. § 2774).

Background

The record shows that in 1992, the member enrolled in the United States Army, Specialized Training Assistance Program (STRAP) to obtain financial assistance in her nursing education. As a result, she received stipend payments and upon completion of the program in 1994, she was required to serve a statutory military service obligation of four years. However, on February 12, 1996, the Army accepted the member's resignation of her commission in lieu of elimination in connection with the intentional omission or misstatement of her medical history during the STRAP application process. On appeal, the member notes that she passed the Army's 1992 physical and was denied a hearing before a board of officers. She contends that she was falsely accused of fraud and that she merely experienced a change in her health.

Discussion

We accept the Army's statement of facts absent clear and convincing evidence, to the contrary. *See* 57 Comp. Gen. 415, 419 (1978). However, the application of 10 U.S.C. § 2774 to this debt does not depend on the circumstances surrounding member's separation. The question is whether the debt was incurred as a result of erroneous payments. A debt cannot be considered for waiver under 10 U.S.C. § 2774 unless the payment was erroneous when made. *Compare* B-261958 (November 8, 1995), a similar situation involving a re-enlistment bonus. The record is devoid of any indication that any stipend payment was erroneous when paid. If relief is available, it would appear to be in the form of a request from the member to the Secretary of the Army to relieve her from the recoupment requirement pursuant to paragraph 620202E of Volume 7A of the DoD Financial Management Regulation - *Military Pay and Policy Procedures-Active Duty and Reserve*.

Conclusion

We affirm the Settlement Certificate.

Signed: Michael D. Hipple

Michael D. Hipple
Chairman, Claims Appeals Board

Signed: William S. Fields

William S. Fields
Member, Claims Appeals Board

Signed: Jean E. Smallin

Jean E. Smallin
Member, Claims Appeals Board