

KEYWORDS: waiver of indebtedness; Selective Reenlistment Bonus

DIGEST: The unearned portion of a Selective Reenlistment Bonus may not be considered for waiver under 10 U.S.C. § 2774 because payment was proper when made.

CASENO: 07103007

DATE: 11/15/2007

DATE: November 15, 2007

In Re:

[REDACTED]

Claimant

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) Claims Case No.07103007
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**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

The unearned portion of a Selective Reenlistment Bonus may not be considered for waiver under 10 U.S.C. § 2774 because payment was proper when made.

DECISION

A former Navy service member requests reconsideration of the October 17, 2007, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 07092703. In that decision, DOHA did not disturb the Defense Finance and Accounting Service's (DFAS) decision to waive \$1,226.72 of the \$7,671.53 claim against the member. DOHA determined that the balance (\$6,444.81) could not be considered for waiver.

Background

On October 15, 2005, the member reenlisted in the United States Navy for six years. As a result, he was entitled to receive a selective reenlistment bonus (SRB) in the gross amount of \$20,849.49. Prior to his discharge on September 27, 2006, the member received payments on the SRB in the amount of \$10,424.74. The member became liable for recoupment by the Navy for a pro rata portion of the SRB already paid because he did not complete his enlistment contract. This amount was determined to be \$9,699.98. At the time of his discharge, the member was due a net payment in the amount of \$3,139.48, representing 12 days pay and allowances, clothing allowance and 49 days lump sum leave. DFAS applied the \$3,139.48 to the member's debt, reducing it to \$6,560.50.

In addition, the member's pay account was not updated to show that he was discharged on September 27, 2006. As a result, the member received active duty pay on September 30, 2006, in the amount of \$1,111.03. He also erroneously received an SRB payment on October 2, 2006, in the amount of \$2,048.95. DFAS determined the total claim against the member was \$9,756.48. The member requested waiver of the claim and DFAS subsequently waived \$1,226.72, denied waiver in the amount of \$3,195.98, and determined that \$5,333.78 could not be considered.

DFAS later determined that at the time of the member's discharge, he was actually entitled to receive a final separation payment in the net amount of \$5,224.43, representing 12 days pay and allowances, clothing allowance, SRB payment and 49 days lump sum leave. Since the member was indebted to the government in the amount of \$9,699.98 for SRB recoupment, DFAS should have applied the \$5,224.43 to the member's debt. However, because the member's pay account was not updated to show he was discharged, he received payments totaling \$3,195.98 (\$1,111.03 active duty pay + \$2,048.95 SRB payment), which reduced his entitlement to \$2,028.45 (\$5,224.43 - \$3,195.98). DFAS applied the \$2,028.45 entitlement to the \$9,699.98, the amount the member was indebted for SRB recoupment, reducing the member's debt to \$7,671.53.

In the appeal decision, our Office did not disturb DFAS's waiver of the \$1,226.72. Thus, our Office considered \$6,444.81 (\$7,671.53 - \$1,226.72) for waiver. Our Office concluded that the \$6,444.81 could not be considered for waiver because it did not represent an erroneous payment. The DOHA adjudicator explained that a claim arising from a properly paid SRB, which later must be recouped because of a member's early separation, is not a claim arising from an erroneous payment which may be considered for waiver under 10 U.S.C. § 2774.

In his reconsideration request, the member disagrees with a statement made by the DOHA adjudicator in the appeal decision. The adjudicator stated that while she sympathized with the member's situation concerning the extent of damages his spouse had caused his finances, this was not a basis for waiver and did not change the fact that the SRB payments he received were proper payments. The member states that he was required to give his spouse power of attorney while he was on missions away from home and because he did so, his financial situation deteriorated. He states that he is unemployed and preparing to attend school. He requests assistance in the form of debt reduction or a payment plan.

Discussion

The member seeks relief under 10 U.S.C. § 2774. Under 10 U.S.C. § 2774, we have the authority to waive collection of erroneous payments of pay and allowances made to service members, if collection would be against equity and good conscience and not in the best interest of the United States. A debt cannot be considered for waiver unless the payment was erroneous when made, and we have held that a debt arising from the unearned portion of an SRB does not arise from an erroneous payment, since the payment was proper when made. *See* DOHA Claims Case No. 06053038 (June 2, 2006); B-261958, Nov. 8, 1995; and B-254196, Dec. 23, 1993.

In this case, the SRB payments the member received were proper when made and subject to recoupment because of the member's early discharge. Therefore, we cannot consider them for waiver. In addition, as explained in the appeal decision, financial hardship is not a factor for consideration in determining whether waiver is appropriate. *See* DOHA Claims Case No. 07032901 (April 4, 2007). Finally, DFAS, not our Office, has the authority to consider any repayment plan.

Conclusion

The member's request for relief is denied, and we affirm the October 17, 2007, appeal decision. In accordance with DoD Instruction 1340.23, ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

Signed: Michael D. Hipple

Michael D. Hipple
Chairman, Claims Appeals Board

Signed: Jean E. Smallin

Jean E. Smallin
Member, Claims Appeals Board

Signed: Catherine M. Engstrom

Catherine M. Engstrom
Member, Claims Appeals Board