

DATE: June 4, 1997

In Re:

[Redacted]

Claimant

Claims Case No. 97022502

CLAIMS APPEALS BOARD DECISION

DIGEST

Generally, when a payment of Selective Reenlistment Bonus (SRB) is erroneous when paid, it may be considered for waiver. When a service member has served more than the pro-rata period for which he received the erroneous SRB, his debt may be waived. Any amount he has repaid may be returned to him at that time.

DECISION

This is in response to an appeal of the U.S. General Accounting Office's (GAO) Settlement Certificate B-274759, November 18, 1996, which agreed to waive a former Marine Corps member's debt for an erroneous Selective Reenlistment Bonus payment when the member completes his reenlistment contract on June 23, 1999. Pursuant to Public Law No. 104-316, October 19, 1996, the authority of the Comptroller General to waive a claim of the United States against a person arising out of an erroneous payment of pay (salary) or allowances, including travel, transportation, or relocation expenses and allowances was transferred to the Director Office of Management (OMB). The Director of OMB delegated his waiver authority involving all uniformed service members and civilian employees of the Department of Defense to the Secretary of Defense. The Defense Office of Hearings and Appeals exercises the authority of the Secretary.

Background

The record indicates that the service member reenlisted on June 24, 1995, for four years and was supposed to receive a Selective Reenlistment Bonus (SRB) of \$10,300. The member received the first installment of \$3,708 before it was discovered that he was not eligible for the SRB. Between August 1, 1995, and July 31, 1996, the member's debt was liquidated. The member requested waiver of the government's claim against him under 10 U.S.C. 2774. The GAO agreed that waiver of the overpayment was appropriate; however, repayment of the \$3,708 recouped would not occur until the end of the 48-month contract.

The Marine Corps requests that the recouped \$3,708 be repaid immediately. The Marine Corps notes that the member had served approximately 20 months of his 48-month contract at the time its request was filed.

Discussion

We may grant waiver of a debt arising out of an erroneous payment of pay and

allowances to members or former members if collection would be against equity and good

conscience and not in the best interest of the United States, provided there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the member. See 10 U.S.C.

2774 (1995). In the present case, the erroneous payment was waived; however, in the interest of the government, GAO held that waiver could not be approved until completion of the reenlistment contract.

The statutory authority for payment of SRB is 37 U.S.C. 308, which requires that a member who voluntarily, or because

of his misconduct, does not complete the term of enlistment for which the bonus was paid shall refund that percentage of the bonus applicable to the unexpired period for which it was paid. 37 U.S.C. 308(d)(1). A debt arising from the erroneous payment of SRB may be waived, but GAO has held, and we agree, that a service member who receives an erroneous SRB is in the same position relative to subsection 308(d)(1) as a service member who receives a SRB he is entitled to. Accordingly, the Comptroller General had suspended approval of a waiver until completion of the reenlistment because waiver prior to that time could have precluded recovery of a pro-rata portion of the bonus if, for some reason, the member had failed to complete the enlistment. See B-256544, July 15, 1994.

In this case, the service member received the first installment of the erroneous SRB, which represented approximately one-third of the total SRB. As of the date of this decision, the service member has served approximately 23 months of his 48-month contract, or almost half of his contract. Under the circumstances, where the request for waiver is made after the member has served a period of his reenlistment contract which is more than the pro-rata share of the SRB payment he received, we see no reason why waiver should not be granted. Therefore, waiver is appropriate.

Conclusion

Accordingly, the member should be repaid the \$3,708.

/s/

Michael D. Hipple

Chairman, Claims Appeals Board

/s/

Christine M. Kopocis

Member, Claims Appeals Board

/s/

Jean E. Smallin

Member, Claims Appeals Board