

KEYWORDS: waiver of indebtedness

DIGEST: A midshipman in the Naval Reserve Officers Training Corps (NROTC) Scholarship Program who disenrolled from the program and failed to complete her subsequent military service obligation was required to reimburse the government for the cost of advanced educational assistance she received. The resulting debt can not be considered for waiver under 10 U.S.C. § 2774, because the payments were proper when they were made.

CASENO: 2009-WV-072004.2

DATE: 10/29/2009

DATE: October 29, 2009

In Re:)
) [REDACTED]) Claims Case No. 2009-WV-072004.2
))
Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

A midshipman in the Naval Reserve Officers Training Corps (NROTC) Scholarship Program who disenrolled from the program and failed to complete her subsequent military service obligation was required to reimburse the government for the cost of advanced educational assistance she received. The resulting debt can not be considered for waiver under 10 U.S.C. § 2774, because the payments were proper when they were made.

DECISION

A former NROTC midshipman requests reconsideration of the September 29, 2009, decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claims Case No. 09072004. In that decision, DOHA determined that the government's \$42,760.00 claim

against her could not be considered for waiver.

Background

The record shows that on May 25, 2006, the midshipman signed a Naval Reserve Officers Training Corps (NROTC) Scholarship Service Agreement, which enrolled her in the NROTC Scholarship Program and appointed her as a midshipman. During Fiscal Year (FY) 2006 and FY 2007, educational benefits were paid on the claimant's behalf while she attended a university. These benefits totaled \$42,760.00. Under the terms of the Scholarship Service Agreement, the midshipman had an obligation to finish her instruction at the university and serve eight years of military service. The midshipman disenrolled from the program and signed the NROTC Disenrollment Authorization, NSTC 1533/28, effective April 23, 2008. Paragraph 2 on the form states: "The Secretary of the Navy has approved that Midshipman [redacted] be discharged from the Naval Service and that she be required to reimburse the government for the amount of advanced educational assistance received. The following page 13 entry shall be made and forwarded to NSTC (OD4): 'I acknowledge indebtedness to the United States Government for advanced educational assistance in the amount of \$42,760.00 received in the form of NROTC scholarship benefits.'" The form is signed by the midshipman and witnessed.

The midshipman contends that we should review the voluntariness of her signing the contract with the NROTC in the beginning. She states that she was not well counseled. She points to the fact that she had numerous physical issues, as well as depression and anxiety. She states she was struggling academically. She states, "When someone has no other option, the choice is not voluntary." She argues it was not in the best interests of the Navy to have her continue as a midshipman. She states that at the very least she should not be responsible for the first year's cost of education because if she had not signed the contract at the beginning of her second year, the Navy would have paid for these expenses.

Discussion

Section 2774 of title 10, United States Code, provides authority for waiving claims for erroneous payments of pay and allowances made to or on behalf of members or former members of the uniformed services, if collection of the claim would be against equity and good conscience and not in the best interests of the United States. Generally, these criteria are met by a finding that the claim arose from an administrative error with no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the member or any other person having an interest in obtaining the waiver.

While this Board has the authority to consider certain claims of the United States for waiver under the provisions of 10 U.S.C. § 2774, we cannot consider a debt for waiver unless it arose from an erroneous payment of pay or allowances. The debt here did not arise from "pay or allowances" as that term is used in 10 U.S.C. § 2774(a) because educational expenses are not considered "pay or allowances." *See* DOHA Claims Case No. 07101704 (October 30, 2007). Moreover, if the payments were valid when made, we have no authority to relieve a member of

her obligation to repay the government. In this case, the midshipman signed the NROTC Scholarship Service Agreement.¹ She acknowledged in that agreement that she would reimburse the government for any advanced educational assistance she received. When she disenrolled from the program, she again acknowledged that she would reimburse the government for any advanced educational assistance – at that time, specifically in the amount of \$42,760.00. The fact that the midshipman disenrolled from the program prior to completing the requirements does not change the nature of the payments she received. Although the midshipman maintains her actions were not voluntary, there is no evidence in the record to support her contention. She also believes the collection of this debt is against equity and good conscience, and not in the interests of the United States; however, the payments were proper when made, and were not for “pay and allowances,” and therefore may not be considered for waiver under the provisions of 10 U.S.C. § 2774. *See* DOHA Claims Case No. 07101704, *supra*. As noted in the appeal decision DOHA’s denial of waiver under 10 U.S.C. § 2774 does not preclude the midshipman from pursuing other available remedies.²

Conclusion

The midshipman’s request for relief is denied, and we affirm the September 29, 2009, appeal decision. In accordance with Department of Defense Instruction 1340.23, ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

///Original Signed///

Michael D. Hipple
Chairman, Claims Appeals Board

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¹NROTC Scholarship Service Agreement, para 2.c(3), states, “If I do not complete the NROTC program, or if I complete the program but decline to accept a commission when offered, I may be ordered to active duty by the Secretary of the Navy to serve in an enlisted status for four (4) years or more, or for such lesser period as the Secretary may prescribe, or reimburse the government for any advanced educational assistance I received under this AGREEMENT.”

²*See* 10 U.S.C. § 2005(a)(3) and 37 U.S.C. § 303a(e), regarding the Secretary of the Service concerned’s authority to enforce payment and to establish by regulations procedures for determining the circumstances under which an exception to the required repayment may be granted.

Jean E. Smallin
Member, Claims Appeals Board

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Natalie Lewis Bley
Member, Claims Appeals Board