

J. Magg



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## Decision

**Matter of:** Linda S. Bailey - Request for Waiver of Debt

**File:** B-234426

**Date:** February 23, 1990

### DECISION

Linda S. Bailey asks that we reconsider our Claims Group's denial of her request for waiver of her indebtedness to the government in the amount of \$1,462.61, which arose from the required repayment of a Selective Reenlistment Bonus (SRB) that Ms. Bailey had received while in the Air Force. The Claims Group denied Ms. Bailey's request that the debt be waived on the grounds that the debt did not result from an "erroneous payment" under 10 U.S.C. § 2774, the statute that authorizes waiver.

In requesting reconsideration, Ms. Bailey disagrees with the Claims Group's position, and points out that before her discharge she had made several good faith attempts to inform the proper officials that inadequate amounts were being withheld from her pay to repay the reenlistment bonus as required. Ms. Bailey's argument apparently is that if those officials had listened to her, enough money would have been withheld from her pay by the time of her discharge that she would not now be faced with a \$1,462.61 debt.

We affirm the Claims Group's decision.

Ms. Bailey, then a sergeant in the Air Force, reenlisted for 6 years on March 28, 1983, and received an SRB in the amount of \$5,642.79. She was discharged on September 16, 1985, before completing her enlistment, and therefore was required to repay a prorated portion of the SRB.

Shortly before her discharge Ms. Bailey recognized that the Air Force's calculation of the amount to be repaid was too low, but was unable to convince agency officials. The Air Force withheld two-thirds of Ms. Bailey's next to last check, and all of her last one, to recoup \$1,717.78 of the bonus. It was not until after Ms. Bailey was discharged that the Air Force determined that the actual amount owed was \$3,180.39. The agency informally advised Ms. Bailey of her further indebtedness approximately 1 month after she

left the service, and formally advised her by letter of December 11, 1985.

We have no legal authority to waive Ms. Bailey's debt. The Comptroller General is authorized by 10 U.S.C. § 2774 to waive only a claim of the United States arising from an "erroneous payment" of pay and allowances, if collection would be against equity and good conscience and not in the best interest of the United States. We have held that a debt arising from the unearned portion of a reenlistment bonus does not arise out of an erroneous payment, since at the time the payment was made the member was entitled to it and the payment therefore was proper. Eugene M. Edynak, M.D., B-200113, Feb. 13, 1981.

The only exception is where all or part of any payment made at the time of discharge should have been set off against the debt; in that event, the amount involved is viewed as an erroneous payment and is available for waiver consideration. See Barry L. Wells, B-228828, Mar. 23, 1988. Pre-discharge payments of regular pay are not converted to "erroneous" payments for purposes of 10 U.S.C. § 2774 merely because they could have been set off against a debt had the full extent of the debt been appreciated before the member left the service. See Andrew J. Jossis, B-236270, Jan. 26, 1990. Ms. Bailey's final payment was entirely set off, so that she received no money at the time of her discharge.

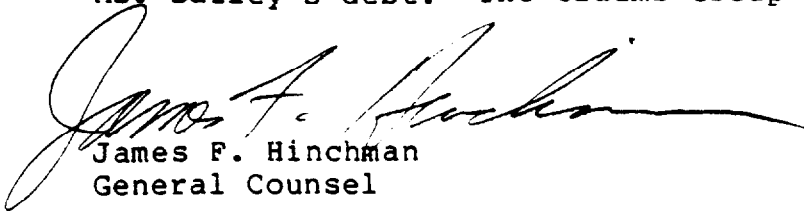
Accordingly, the payment of the SRB to Ms. Bailey was not an erroneous payment, so that our Office has no authority to waive the government's claim against her for further repayment. The fact that Ms. Bailey attempted to have the Air Force correct its calculations before she was discharged cannot serve to extend our Office's waiver authority.

We note that Ms. Bailey cites our decision in 56 Comp. Gen. 943 (1977) as a basis for waiver of her debt. In that case, certain reserve officers were incorrectly advised about their basic and special pay entitlements. We permitted waiver of repayment of amounts received by those officers who did not know that they had been given incorrect information and had no reason to suspect that they were being overpaid. Ms. Bailey argues that since she similarly was without fault in the matter, and in fact had told the Air Force of its error, her debt too should be waived.

The cited case does not apply here. The basic reason is that payments to the officers involved there in fact were erroneous when made. In contrast, in the present case no

erroneous payment was made to Ms. Bailey, as discussed above.

Accordingly, there is no legal basis on which to waive Ms. Bailey's debt. The Claims Group's decision is affirmed.



James F. Hinchman  
General Counsel