



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Sergeant Paul S. Ferguson—Claim for Reimbursement of Student Loan Payments

File: B-261017

Date: October 10, 1995

DIGEST

A member with outstanding student loans enlisted in the National Guard under an agreement which provided for repayment of his loans. He was then erroneously advised that he was not eligible for the loan repayment program and was forced to repay the loans himself. He was later advised that he was eligible for the program. He may be reimbursed for the payments he made, up to the maximum allowed.

DECISION

This is in response to an appeal from a Claims Group settlement which denied the claim of Sergeant Paul S. Ferguson, United States Army Reserve National Guard, for reimbursement of student loan payments he made after the National Guard erroneously refused to make the payments on his behalf. We allow the claim.

In 1985 Sergeant Ferguson enlisted in the National Guard for 8 years under an agreement which provided for repayment of college loans under 10 U.S.C. § 2171. Sergeant Ferguson also enrolled in the Army Reserve Officer Training Corps (ROTC) in 1985, but resigned soon afterwards and resumed his enlisted status. On September 6, 1987, he completed training in his job specialty as required for the loan repayment program. He was informed in 1987 that his enrollment in ROTC had terminated his entitlement to student loan repayments. In 1993 it was determined that Sergeant Ferguson's enrollment in ROTC should not have caused the termination of his entitlement to loan repayment.

When college loan payments came due, Sergeant Ferguson was obligated to pay them. He had paid \$6,802.44 in principle and interest himself before he learned in 1993 that his termination from the loan repayment program in 1987 had been erroneous. In 1993 the National Guard agreed to make loan payments on behalf of Sergeant Ferguson, but refused to reimburse Sergeant Ferguson for the payments he himself made.

Under 10 U.S.C. § 2171 the Secretary of Defense may repay a portion of certain student loans of qualified enlisted members. The statute prohibits refunding of amounts already repaid.

The legislative history of Pub. L. No. 99-145, Title VI, § 671(a)(1), which is the source of 10 U.S.C. § 2171, indicates that the purpose of the statute is to attract high quality personnel to enlist in the uniformed services through the offer of repayment of student loans. Therefore, it is our view that 10 U.S.C. § 2171(d), the provision which prohibits the refund of amounts already repaid, pertains to those who have already repaid their student loans when they enlist and who then learn of the program and request refund of the loans they have already repaid.

Sergeant Ferguson had outstanding student loans when he enlisted in the National Guard in 1985. When the National Guard erroneously advised Sergeant Ferguson in 1987 that he was not eligible for loan repayment, loan payments continued to fall due, and he was forced to make the payments himself.¹ It is our view that the prohibition against refund of repayment does not apply to a member in Sergeant Ferguson's situation because he was already entitled to repayment when an error by the National Guard forced him to make the payments himself.

Accordingly, to the extent that Sergeant Ferguson has not been reimbursed for the loan payments he has made, he may be reimbursed up to the maximum to which he is entitled under the statute, if his claim is otherwise proper.

/s/Seymour Efros
for Robert P. Murphy
General Counsel

¹Since Sergeant Ferguson's claim was not barred in 1989 when the regulations were amended to allow filing of claims with the agency involved as well as with General Accounting Office for the purposes of the Barring Act, the Claims Group properly determined that his filing of his claim with the National Guard in 1993 prevented it from being barred under the Barring Act.