

**IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION**

IN RE: MICHAEL BOYD, Debtor

**5:12-bk-71108
Chapter 7**

MICHAEL BOYD

PLAINTIFF

v.

5:13-ap-7047

**UNITED STATES DEPARTMENT
OF DEFENSE/UNITED STATES OF AMERICA**

DEFENDANT

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

Before the Court is the United States's *Motion For Summary Judgment* filed on October 2, 2014, regarding the dischargability of a debt owed to the United States for the recoupment of the debtor's enlistment bonus. The United States bases its argument on 37 U.S.C. § 303a(e)(4). Under § 303a(e)(4), a person is required to repay to the United States a proportional amount of an enlistment bonus if the person receiving the bonus separates from service before finishing his agreed upon term. That obligation to repay is not dischargeable in bankruptcy if the person receives a discharge in bankruptcy within five years of separating from the service. In his complaint, the debtor prays for the Court to “[i]ssue a narrowly tailored declaratory judgment indicating that the requirements of 37 USC 303a(e)(4) have been satisfied in this case and do not bar the applicability of the discharge to Plaintiff’s debt allegedly owed to the United States for recoupment of a military enlistment bonus.” The debtor responded to the United States's motion for summary judgment on October 30, 2014. For the reasons stated below, the Court grants the United States's motion.

The Court has jurisdiction over this matter under 28 U.S.C. § 1334 and 28 U.S.C. § 157, and it is a core proceeding under 28 U.S.C. § 157(b)(2)(I). The following opinion constitutes findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052.

The United States filed a statement of material facts with its motion for summary

judgment. The debtor filed with his response to the motion for summary judgment a statement of facts the debtor believes to be in dispute. Without considering the facts that the debtor believes to be in dispute, the Court acknowledges the following undisputed facts. The debtor entered the United States Navy on April 12, 2006. Upon entry, the debtor accepted an enlistment bonus of \$7000. During his service in the Navy, the debtor was subject to the administrative disciplinary procedure known as Captain's Mast.¹ The undisputed Captain's Mast hearings occurred on the following dates for the reasons stated:

- ! August 12, 2006 Failure to Obey Orders
- ! September 27, 2007 Unauthorized Absence
- ! October 22, 2007 Unauthorized Absence
- ! November 12, 2007 Unauthorized Absence
- ! November 29, 2007 Failure to go to Appointed Place of Duty

In addition to these five Captain's Masts, the debtor recalls an additional Captain's Mast that was held in March 2007 while the debtor was serving on the USS Wasp (LHD 1), a multi-purpose amphibious assault ship. The debtor was separated from military service on December 28, 2007.

The debtor filed his voluntary chapter 7 bankruptcy petition on March 19, 2012. The Court entered the debtor's discharge on June 19, 2012, and the case was closed on July 11, 2012. On April 26, 2013, the Court reopened the case on the debtor's motion, and on June 27, 2013, the debtor filed his *Adversary Proceeding to Obtain Declaratory Judgment or Other Equitable Relief*.

The United States's position is that the debtor is obligated to return the unearned portion of the enlistment bonus that was given to the debtor when he enlisted. This enlistment

¹ According to the United States's motion for summary judgment, Captain's Mast is a non-judicial punishment by which military commanders may administer punishment to military members for Uniform Code of Military Justice offenses.

bonus was conditioned upon the debtor satisfying his term of enlistment with the Navy. When the debtor was separated from the Navy prior to the completion of his agreement, the debtor was obligated to repay the remaining amount. The United States argues that the obligation to repay the debt survived the debtor's bankruptcy discharge. In support of its position, the United States references 37 U.S.C. § 303a(e), which states in relevant part:

(e) Repayment of unearned portion of bonuses and other benefits when conditions of payment not met; termination of entitlement to unpaid amounts.—

(1)(A) Except as provided in paragraphs (2) and (3), a member of the uniformed services who receives a bonus or similar benefit and whose receipt of the bonus or similar benefit is subject to the condition that the member continue to satisfy certain eligibility requirements *shall repay to the United States an amount equal to the unearned portion of the bonus or similar benefit if the member fails to satisfy the eligibility requirements* and may not receive any unpaid amounts of the bonus or similar benefit after the member fails to satisfy the requirements, unless the Secretary [of Defense] concerned determines that the imposition of the repayment requirement and termination of the payment of unpaid amounts of the bonus or similar benefit with regard to the member would be contrary to a personnel policy or management objective, would be against equity or good conscience, or would be contrary to the best interests of the United States.

....

(4) An obligation to repay the United States under this subsection is, for all purposes, a debt owed the United States. *A discharge in bankruptcy under Title 11 does not discharge a person from such debt if the discharge order is entered less than five years after—*

(A) the date of the termination of the agreement or contract on which the debt is based; or

(B) in the absence of such an agreement or contract, the date of the termination of the service on which the debt is based.

37 U.S.C. § 303a(e) (emphasis added).

The debtor opposes summary judgment and argues that, although he was officially separated from the Navy in December 2007, the decision to separate him had been made in March 2007. According to the debtor, the debtor's superior officer participated in a

self-serving scheme to delay the debtor's separation from the Navy. But for the delay in processing his separation, the debtor argues that he should have been discharged from the Navy more than five years prior to his bankruptcy discharge and any obligation he had to repay the enlistment bonus would have been discharged in his bankruptcy.

Federal Rule of Bankruptcy Procedure 7056 provides that Federal Rule of Civil Procedure 56 applies in adversary proceedings. Rule 56 states that summary judgment shall be rendered "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(a). The burden is on the moving party to establish the absence of a genuine issue of material fact and that it is entitled to judgment as a matter of law. *Canal Ins. Co. v. ML & S Trucking, Inc.*, No. 2:10-CV-02041, 2011 WL 2666824, at *1 (W.D. Ark. July 6, 2011); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) (citing to former Fed. R. Civ. P. 56(c); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986). The burden then shifts to the non-moving party, who must show "that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." Fed. R. Civ. P. 56(c)(1)(B). The non-moving party is not required to present a defense to an insufficient presentation of facts by the moving party. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 161 (1970) (quoting 6 J. Moore, Fed. Prac. 56.22(2), pp. 2824-25 (2d ed. 1966)). However, if the non-moving party fails to address the movant's assertion of fact, the court may consider the fact undisputed. Fed. R. Civ. P. 56(e)(2).

When ruling on a summary judgment motion, the Court must view the facts in the light most favorable to the non-moving party and allow that party the benefit of all reasonable inferences to be drawn from the evidence. *Canada v. Union Electric Co.*, 135 F.3d 1211, 1212-13 (8th Cir. 1997); *Ferguson v. Cape Girardeau Cty.*, 88 F.3d 647, 650 (8th Cir. 1996).

In his complaint, the debtor is asking this Court to review the facts surrounding the

debtor's separation from the Navy—specifically, the actions of his superior officer. He is also asking the Court to make a determination that the debtor's obligation to repay a portion of his enlistment bonus be set aside. However, it is not within this Court's powers to review, much less set aside or amend, a disciplinary action by the Navy. The relief requested is a nonjusticiable controversy and this Court lacks the ability to supply the relief requested by the debtor. *Daniels v. U.S.*, 947 F. Supp. 2d 11, 19 (D.D.C. 2013) (“Justiciability is a particularly apt inquiry when one seeks review of military activities.” quoting *Murphy v. United States*, 993 F.2d 871, 872 (Fed. Cir. 1993)); see also *Orloff v. Willoughby*, 345 U.S. 83, 94 (1953) (“The military constitutes a specialized community governed by a separate discipline from that of the civilian. Orderly government requires that the judiciary be as scrupulous not to interfere with legitimate Army matters as the Army must be scrupulous not to intervene in judicial matters.”); *Watson v. Ark. Nat'l Guard*, 886 F.2d 1004, 1006 (8th Cir. 1989) (quoting *Chappell v. Wallace*, 462 U.S. 296, 305 (1983)).

Various types of debts are not discharged in bankruptcy, many of which are listed within Title 11. See, e.g., 11 U.S.C. § 523. However, some other exceptions to discharge are located outside the bankruptcy code. Section 303a of title 37—the provision that controls the relationship between an obligation to repay an enlistment bonus and the bankruptcy code—is one such exception.² This statute states that the unearned portion of certain bonuses must be repaid to the United States. 37 U.S.C § 303a(e)(1)(A). If the terms of the agreement upon which a bonus was paid are not satisfied—such as being separated from the service prior to the completion of the term of enlistment—then an amount proportional to the uncompleted term of enlistment is owed as a debt to the United States. 37 U.S.C § 303a(e)(4). That debt is not discharged in bankruptcy if the bankruptcy

² Congress passed the "National Defense Authorization Act for Fiscal Year 2006" on January 6, 2006. Within that Act, Congress added 37 U.S.C. § 303a(e). Congress stated that § 303a "shall apply to any case commenced under title 11, United States Code, after March 30, 2006." National Defense Authorization Act for Fiscal Year 2006, Pub.L. No. 109-163, § 687, 119 Stat. 3136, 3327 (2006).

discharge order is entered less than five years after the date of the termination of the service on which the debt is based. *Id.* All of those conditions have been met in this case and only the Secretary of Defense has the statutory right to determine whether repayment “would be contrary to a personnel policy or management objective, would be against equity or good conscience, or would be contrary to the best interests of the United States.” 37 U.S.C. § 303a(e)(1)(A).

The parties do not dispute that the debtor was discharged from the Navy on December 28, 2007. The separation was prior to the completion of the agreed upon enlistment term and, according to the statute, the debtor became obligated to repay a proportional amount of his enlistment bonus. The debtor filed his voluntary chapter 7 bankruptcy on March 19, 2012, and was granted a discharge on June 19, 2012. The time between the debtor's separation from the Navy and his chapter 7 discharge was just under four years and six months. According to the statute, an unearned bonus is not discharged in bankruptcy if the debtor receives a discharge in bankruptcy within five years of the debtor's separation from the service. Accordingly, the Court grants the United States's motion for summary judgment and denies the relief requested by the debtor and dismisses this adversary proceeding.

IT IS SO ORDERED.


Ben Barry
United States Bankruptcy Judge
Dated: 01/07/2015

cc: Todd F. Hertzberg, attorney for the debtor
Deborah Groom, attorney for the United States
Jill Jacoway, chapter 7 trustee