

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
ROOM 211
FEDERAL BUILDING AND U.S. POST OFFICE
225 SOUTH PIERRE STREET
PIERRE, SOUTH DAKOTA 57501-2463

IRVIN N. HOYT
BANKRUPTCY JUDGE

TELEPHONE (605) 224-0560
FAX (605) 224-9020

May 22, 1995

Wanda Howey Fox, Esq.
Counsel for Debtor
Post Office Box 18
Yankton, South Dakota 57078

Joseph P. Barnett, Esq.
Counsel for Educational Assistance Corp.
Post Office Box 490
Aberdeen, South Dakota 57402

Subject: ***In re Doreen A. Graff,***
Chapter 7; Bankr. No. 94-40384

Dear Counsel:

The matter before the Court is the Motion Requesting Order Satisfying Judgments of Record filed by Debtor on December 12, 1994 and the resistance thereto filed by the Education Assistance Corporation (EAC) on December 30, 1994. This is a core proceeding under 28 U.S.C. § 157(b)(2). This letter memorandum of decision and subsequent judgment shall constitute findings and conclusions under F.R.Bankr.P. 7052. As set forth below, the Court finds that the judgment of the EAC should not be removed because EAC's claim is non dischargeable.

Doreen A. Graff borrowed funds guaranteed by the EAC three times: \$1,500.00 from Hurley State Bank on August 13, 1984; \$1,500.00 from Valley State Bank on October 3, 1984; and \$1,000.00 from Valley State Bank on March 3, 1986. After quitting as a full-time student on May 16, 1986, Debtor received a six-month grace period before she was required to begin repayment. Interest began to accrue on December 1, 1986 when the grace period expired. The first payment was due January 10, 1987. That date was within 45 days of the date when interest began to accrue as required by federal regulations. Debtor did not make any payments in January, February, or March 1987. Debtor made application for forbearance on March 22, 1987, and requested that no payments be required for January through March 1987 and that payments of \$25.00 only be made in April through June 1987. The application acknowledged that payments were due from January 10, 1987. The "retroactive"

forbearance was approved March 31, 1987.

Debtor made some payments in the following few months but did not fully comply with her March 31, 1987 agreement with EAC. A second forbearance was approved on November 5, 1987. It provided that Debtor did not have to make any payments in June, July, August, or September 1987. Debtor did not make any further payments in 1987.

Graff ("Debtor") filed a Chapter 7 petition on July 22, 1994. Debtor did not schedule any debt to the EAC. A discharge was entered October 19, 1994.

On December 12, 1994, Debtor filed a Motion Requesting Order Satisfying Judgments of Record. One of the listed judgments that Debtor wanted removed was one entered May 7, 1991 for \$4,216.84 plus costs and interests on behalf on EAC.

EAC objected to the Motion on December 30, 1994 on the grounds that the student loans owed by Debtor had not been due and owing more than seven years, exclusive of any suspension of repayment periods, and, therefore, the debt to EAC was not dischargeable under 11 U.S.C. § 523(a)(8).

A hearing was held February 22, 1995. At the request of the parties, the Court allowed them thirty days to settle the matter. If not settled, the parties were directed to submit stipulated facts and briefs.

Stipulated facts were filed March 27, 1995. Briefs were received by March 29, 1995 and the matter was taken under advisement.

Debtor argues that EAC could not retroactively grant Debtor a forbearance for January, February, and March 1987 when the payment dates had already passed. Therefore, Debtor argues the loans first became due on January 10, 1987, which is more than seven years before she filed her bankruptcy petition on July 22, 1994.

EAC claims that it *may* approve a retroactive forbearance and that the loans had not been due more than seven years when Debtor filed her petition based on the two forbearances granted.

Upon consideration of 11 U.S.C. § 523(a)(8)(A) and the case law cited by each party, the Court concludes that Debtor's student loans had not been due more than seven years before she filed her petition and, thus, are non dischargeable.

Debtor's first payment originally was due January 10, 1987. Debtor sought and obtained forbearance of all payments for the

first three months of 1987 and a reduction of payments for April, May, and June 1987. She then got another forbearance for June, July, August, and September 1987. The case law cited by EAC that reduced payments constitute an applicable suspension of the repayment period is persuasive and is adopted by this Court. Moreover, there is no evidence that the two "retroactive" forbearances were contrary to applicable statutes or rules or that EAC provided the forbearance in bad faith. *In re Huber*, 169 B.R. 82, 86 (Bankr. W.D.N.Y. 1994). Therefore, after all applicable suspension periods are considered, Debtor's first regular payment was not due until October 1987.

When the three remaining months of 1987 are added to the total of seventy-two months for the years 1988 through 1993 and the almost seven months in 1994 before Debtor filed her petition on July 22, 1994, the Court finds that her student loans had been due for a total of 82 months -- less than the required seven years -- when she filed her petition. Therefore, Debtor's student loans may not be discharged under § 523(a)(8)(A) and EAC's judgment should not be removed pursuant to 11 U.S.C. §§ 524(a)(1) and S.D.C.L. § 15-16-20.

Counsel for EAC shall submit a proposed judgment.

Sincerely,

Irvin N. Hoyt
Chief Bankruptcy Judge

INH:sh

CC: Bankruptcy Clerk
United States Trustee
Trustee Rick A. Yarnall