

DATE: July 21, 2022

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In Re:	)	
[REDACTED]	)	Claims Case No. 2019-WV-082703.2
Claimant	)	

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**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

Under Department of Defense Instruction 1340.23 ¶ E8.2.2, the Defense Office of Hearings and Appeals (DOHA) must receive a request for reconsideration within 30 days of the DOHA's initial decision.

**DECISION**

A civilian employee of the Department of Army requests reconsideration of the decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2019-WV-082703, dated October 22, 2020.

**Background**

On May 21, 2017, the employee was sent on a temporary duty (TDY) assignment. She received the full locality *per diem* rate for Meals and Incidental Expenses (M&IE), for the TDY period, May 21, 2017, through August 25, 2017. However, since she was TDY in excess of 30 days, she was only entitled to a flat *per diem* rate of 75% for M&IE.

The employee took a travel advance on her *per diem*. There was no evidence in the case file that the employee incurred M&IE beyond the amount she was reimbursed. The employee was overpaid \$1,638.75 for period May 21, 2017, through August 25, 2017, the difference between her advance full locality rate *per diem* payment and the flat rate *per diem* of 75% for M&IE.

The employee requested waiver of the debt. On July 31, 2019, the Defense Finance and Accounting Service (DFAS) recommended that DOHA waive the claim in full.

In DOHA Claims No. 2019-WV-082703, issued on October 22, 2020, the adjudicator declined to follow DFAS's recommendation, and denied waiver of the employee's debt. The adjudicator described in detail the process to seek reconsideration. The DOHA adjudicator explained that under Department of Defense Instruction 1340.23 (February 14, 2006) ¶ E8.2.2, the employee must send the written appeal request including any documentation that she wished the DOHA Claims Appeals Board to consider, to the address provided in that decision. The adjudicator specified that DOHA must actually receive the request and any supporting documentation, within 30 days of the date of the decision, and that time period may be extended for up to 30 days for good cause shown, if the request for an extension of time is actually received within the original 30 days. The adjudicator added that if the end of the 30-day period is near, to assure receipt within 30 days, the employee may send a faxed, signed copy of the appeal request (or extension of time request), with any supporting documentation, to the fax number provided in the decision and then immediately transmit the original request for an appeal (or extension of time request), with any supporting documentation, by first class or higher class mail to the provided address. The employee's request for reconsideration was received by DOHA on April 8, 2022.

### **Discussion**

The Board has no authority to reconsider the DOHA decision issued on October 22, 2020. Under Instruction ¶ E8.2.2, DOHA had to receive the claimant's request for reconsideration within 30 days of the DOHA's decision issued on October 22, 2020 (absent good cause shown for an extension). That did not occur, nor did the claimant request a 30-day extension to file her reconsideration request for good cause. Therefore, pursuant to Instruction ¶ E7.7, DOHA's decision dated October 22, 2020, became a final action of the Department of Defense under 5 U.S.C. § 5584.

The employee's reconsideration request focused on her awareness that other employees, TDY at the same time and place, did receive a waiver of their debts. We have no authority to investigate the employee's claim of disparate treatment. *See* DOHA Claims Case No. 02032601 (May 13, 2002). In any event, the employee's request for an appeal/reconsideration is untimely, and we have no jurisdiction to review her submission.

## Conclusion

The employee's request for reconsideration is denied, and we affirm the decision dated October 22, 2020. In accordance with DoD Instruction 1340.23 (February 14, 2006) ¶ E7.7 and ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

SIGNED: Catherine M. Engstrom

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Catherine M. Engstrom  
Chairman, Claims Appeals Board

SIGNED: Charles C. Hale

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Charles C. Hale  
Member, Claims Appeals Board

SIGNED: Richard C. Ourand, Jr

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Richard C. Ourand, Jr  
Member, Claims Appeals Board