

DATE: April 3, 2023

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In Re: )  
[REDACTED] ) Claims Case No. 2021-WV-082502.2  
Claimant )

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**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

Under 32 U.S.C. § 716, we may grant waiver of a debt arising out of an erroneous payment of pay and allowances to members or former members if collection would be against equity and good conscience and not in the best interest of the United States, provided there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the member or any other person having an interest in obtaining the waiver.

A request for reconsideration of a decision under Department of Defense Instruction 1340.23 must be received at the Defense Office of Hearings and Appeals (DOHA) no later than 30 days after the date of the decision. Upon request, this period may be extended for an additional 30 days for good cause shown, if the request is received within the original 30 days. In the absence of such request, the decision becomes final and the DOHA Claims Appeals Board may not consider the untimely request for reconsideration.

**DECISION**

A member of the U.S. Air National Guard requests reconsideration of the decision of the Defense Office of Hearings and Appeals in DOHA Claim No. 2021-WV-082502, dated January 31, 2022.

**Background**

The record shows that the member assessed into the Air National Guard on November 26, 2014, and attended basic military training (BMT) in May 2015. He was in receipt of basic

allowance for housing (BAH) and cost of living allowance (COLA) based on his duty location in Alaska. As a new accession in the training pipeline, he received permanent change of station (PCS) orders to attend his initial active duty training. On January 21, 2017, the member's orders were amended to attend military training in New Mexico, Arizona, and Florida from February 2016 through October 2017. During that period, the member resided in government owned quarters but continued to receive BAH and COLA based on Alaska. The Defense Finance and Accounting Service (DFAS) determined that since the member's orders were designated as PCS orders, and he resided in government quarters during the period of his training, he was not entitled to receive BAH and COLA based on Alaska. Since the member erroneously received BAH and COLA based on Alaska during the period February 21, 2016, through October 27, 2017, he was overpaid \$33,572.22.

On August 18, 2021, DFAS recommended that DOHA waive the claim against the member in full. DFAS based their recommendation on the fact that the member was a new accession, *i.e.*, he only had one year of service prior to his initial active duty training. DFAS noted that the member was advised by his finance office that he could maintain his residence in Alaska and his entitlement to BAH and COLA based on his resident location if he submitted his lease. The member continued to maintain his lease agreement during the period of overpayment and his PCS orders did not authorize the shipment of his household goods. Therefore, DFAS concluded that since the member had never received PCS orders before, he reasonably relied on his finance office to pay him the proper rate for his BAH and COLA.

After careful review of the written record in the case, the DOHA adjudicator disagreed with DFAS's recommendation and denied waiver of the member's debt. The adjudicator found that the lease agreement provided by the member during the period of overpayment was a month-to-month lease between the member and his landlord, the member's father, executed on January 1, 2015. The adjudicator cited the long-standing prohibition against reimbursement of a member for expenses for lodging provided by a friend or relative. She explained the prohibition's purpose is to eliminate potential abuses from occurring in connection with claims involving lodging with friends and relatives. She found no evidence that the member was required to maintain his lease with his father during the period of his PCS orders. She explained that although the member was not authorized shipment of his household goods, the record contained emails between the member and his finance office reflecting that if the member was going to maintain a household in Alaska, a BAH/COLA waiver would have to be processed. In response to his finance office's email sent on January 21, 2016, the member responded that his intentions concerning his PCS were to fly back to Alaska, grab his stuff in order to out-process in Anchorage, and hit the road. The adjudicator further explained that BAH is an amount of money prescribed and limited by law which a member receives to pay for quarters not provided by the government. Under the circumstances, the adjudicator found no evidence that the member used the erroneous funds paid to him for their intended purpose. The adjudicator concluded that waiver was not appropriate since the member was provided government housing during the period of overpayment, and there was no evidence that he relied on the erroneously paid funds for their intended purpose. The adjudicator described in detail the process to seek reconsideration of the decision. She explained that under Department of Defense Instruction 1340.23 (Instruction) (February 14, 2006) ¶ E8.2.2, the member may request reconsideration of the decision, but that DOHA must actually receive the request within 30 days of the date of the

decision. She advised that DOHA could extend the deadline for up to an additional 30 days if the member shows good cause; and to facilitate a timely response, the decision provided a fax number to which the member could fax his reconsideration request.

On December 19, 2022, the member faxed his request for reconsideration to DOHA. He states that he did not receive the decision dated January 31, 2022, until after he returned from his deployment orders on June 9, 2022. When he became aware of the decision, he began working on his response while also resuming his duties and attending required training. The member attaches two letters of support for his waiver request, one from his Squadron Commander dated November 8, 2022, and the other from the Commander of the Alaska National Guard, dated September 13, 2022.

### **Discussion**

The processing of debt waiver applications under 32 U.S.C. § 716 is governed by DoD Instruction 1340.23. Under Instruction ¶ E8.2.2, DOHA must receive a request for reconsideration within 30 days of the date of the decision. DOHA may extend this period for up to an additional 30 days for good cause shown, but no request for reconsideration may be accepted after this time has expired. A request for reconsideration must be sent to DOHA at the address listed in Instruction ¶ E8.5. Although the member did not receive the DOHA decision until after he returned from his deployment in June 2022, he did not request an extension to file his reconsideration request and waited six more months after his return to request reconsideration. More than 60 days has passed from the date of the decision and the Board no longer has authority under the Instruction to consider the member's request for reconsideration. *See* DOHA Claims Case No. 2016-WV-030807.2 (January 30, 2017); DOHA Claims Case No. 2016-WV-030701.2 (October 20, 2016); and DOHA Claims Case No. 2014-WV-120803.2 (March 9, 2016).

Even if the Board had the authority to review the member's case on the merits, it would be limited to consideration under the applicable waiver statute, 32 U.S.C. § 716. As set forth in the adjudicator's waiver decision, the record evidence reflects that the member resided in government quarters while on PCS orders to attend military training and his month-to-month lease agreement in Alaska was with his father as his landlord. The adjudicator found no evidence reflecting that the member used the erroneous funds paid to him for housing during the period of overpayment. The adjudicator's decision in this matter concerns the narrow issue of whether his debt can be waived under 32 U.S.C. § 716. It does not preclude the member from pursuing any other possible remedies available to him. *See* DOHA Claims Case No. 2017-WV-062902.2 (February 15, 2019).

## Conclusion

The member's request for reconsideration is untimely, and in accordance with Department of Defense Instruction 1340.23 ¶ 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  
Chairperson, Claims Appeals Board

SIGNED: Richard C. Ourand, Jr

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Richard C. Ourand, Jr  
Member, Claims Appeals Board

SIGNED: Jennifer I. Goldstein

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Jennifer I. Goldstein  
Member, Claims Appeals Board