

DATE: January 24, 2024

In Re:)
 [REDACTED]) Claims Case No. 2022-WV-110104.2
)
Claimant)

**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 the Navy requests reconsideration of the decision of the Defense Office of Hearings and Appeals in DOHA Claim No. 2022-WV-110104, dated June 28, 2023.

Background

The employee was employed by the Department of Veterans Affairs (VA) and her retirement plan was coded as KR FERS (Federal Employees Retirement System) RAE (Revised Annuity Employees), and 3.10% of her biweekly pay was correctly withheld from her salary. On November 2, 2014, the employee was granted a career conditional appointment as an employee of the Navy. The employee’s retirement plan was coded at that time as KF FERS FRAE (Further Revised Annuity Employees), and 4.4% of her biweekly pay was withheld from her salary. However, the Defense Finance and Accounting Service (DFAS) later determined that the employee’s retirement plan should have remained as KR instead of KF. Due to this administrative error, the employee’s salary was miscalculated during the pay period ending (PPE) November 15, 2014, through January 10, 2015, causing an underpayment of salary in the amount of \$97.60. On December 10, 2014, a *Notification of Personnel Action*, SF-50, was issued to correct the employee’s retirement code. However, due to an administrative error, the employee’s retirement code was changed to K FERS, instead of KR FERS. As a result, only

0.08% of the employee's biweekly pay was withheld from her salary instead of 3.10%. Due to this error, the employee's salary was miscalculated during the PPE January 24, 2015, through April 9, 2022, causing an overpayment of salary in the amount of \$7,801.47. DFAS properly applied the underpayment of \$97.60 to the overpayment of \$7,801.47, reducing the employee's debt to \$7,703.87.

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

In DOHA Claim No. 2022-WV-110104, issued on June 28, 2023, the adjudicator declined to follow DFAS's recommendation, and denied waiver in full 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 September 21, 2023. In her submission, the employee requests an exception to policy to extend the timeframe for her to file her appeal of DOHA's denial of the waiver of her debt. She states that she makes this request due to her concern of fairness because she recently learned her co-worker, whose retirement code was also entered incorrectly, received almost a full waiver of their resulting debt.

Discussion

The Board has no authority to reconsider the DOHA decision issued on June 28, 2023. Under Instruction ¶ E8.2.2, DOHA had to receive the claimant's request for reconsideration within 30 days of the date of issuance of DOHA's decision (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 June 28, 2023, became a final action of our waiver authority as set forth under 5 U.S.C. § 5584.

The employee's request for an appeal/reconsideration is untimely, and DOHA has no jurisdiction to review her submission. Even if the Board had the authority to review the employee's case on the merits, we would be limited to the consideration of the individual facts and circumstances of her case. We note that in the employee's submission, she focused on her

co-worker's situation. However, we have consistently held that each case should be considered on the basis of its own merits. *See* DOHA Claims Case No. 2019-WV-082703.2 (July 21, 2022); and DOHA Claims Case No. 02032601 (May 13, 2002).

Conclusion

The employee's request for reconsideration is denied, and we affirm the decision dated June 28, 2023. 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

Catherine M. Engstrom
Chairperson, Claims Appeals Board

Signed: Richard C. Ourand, Jr.

Richard C. Ourand, Jr
Member, Claims Appeals Board

Signed: Charles C. Hale

Charles C. Hale
Member, Claims Appeals Board