

DIGEST: Under the provisions of Department of Defense Instruction 1340.23, the Defense Office of Hearings and Appeals must receive a claimant's request for reconsideration of an appeal decision within 30 days of the date of the appeal decision. Upon request, this period may be extended for an additional 30 days for good cause shown. In the absence of such a request, the decision becomes final 30 days after the date of the appeal decision

KEYWORDS: Waiver of Indebtedness (LQA)

CLAIM NO: 2017-WV-110201.2

DATE: 01/19/2018

DATE: January 19, 2018

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In Re:	)	
[REDACTED]	)	Claims Case No. 2017-WV-110201.2
Claimant	)	

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**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

Under the provisions of Department of Defense Instruction 1340.23, the Defense Office of Hearings and Appeals must receive a claimant's request for reconsideration of an appeal decision within 30 days of the date of the appeal decision. Upon request, this period may be extended for an additional 30 days for good cause shown. In the absence of such a request, the decision becomes final 30 days after the date of the appeal decision.

A debt that arises due to reconciliation of an employee's living quarters allowance (LQA) cannot be considered for waiver under 5 U.S.C. § 5584, unless it is shown that the LQA payments were erroneous when made.

**DECISION**

A former employee of the Department of Defense Education Activity (DoDEA) requests reconsideration of the DOHA appeal decision in DOHA Claim No. 2017-WV-110201, dated December 7, 2017. In that decision, DOHA sustained the determination of DoDEA that the government's claim for \$7,853.35 is not an erroneous payment and cannot be considered for waiver under 5 U.S.C. § 5584.

## **Background**

The employee was employed overseas by DoDEA and was entitled to receive LQA. On August 25, 2008, the employee received an advance payment of LQA in the amount of \$125,691.70 for the period August 22, 2008, through August 21, 2010. On October 24, 2009, the employee resigned from his employment with DoDEA, and accepted a position with the Department of the Army. As a result of his resignation, a reconciliation of the employee's LQA account was conducted. It was determined that since the employee left his position with DoDEA on October 24, 2009, he was only entitled to receive \$73,663.59 of the advance payment of LQA in the amount of \$125,691.70. Therefore, the employee owed \$52,028.11 (\$125,691.70 - \$73,663.59) for the unearned portion of the advanced LQA. On December 3, 2009, the Army submitted \$44,174.76 in repayment on behalf of the employee, reducing his debt to \$7,853.35 (\$52,028.11 - \$44,174.76).

In the appeal decision, the DOHA adjudicator determined that the \$7,853.35 could not be considered for waiver. The adjudicator explained that an overpayment of an advance of LQA is not eligible for waiver consideration because the estimated advance is subject to reconciliation at the end of the LQA payment period, and not erroneous when made. The adjudicator advised the employee that he may request reconsideration of the appeal decision, but that DOHA must actually receive the request within 30 days of the date of the appeal decision in accordance with DoD Instruction 1340.23. She further advised the employee that DOHA could extend this deadline for up to an additional 30 days if the employee showed good cause; and to facilitate a timely response, she provided a fax number to which the employee could fax his reconsideration request.

The employee's request for reconsideration mailed to DOHA was postmarked January 9, 2018; and DOHA received his request on January 12, 2018. In his reconsideration request, the employee states that he was advised by DoDEA to look for another job because his position was being cancelled. Therefore, he immediately sought a position with the Army. He states that all the LQA funds he received were used for lodging purposes while serving in his government position.

## **Discussion**

A request for reconsideration should have been received by DOHA by January 7, 2018. The employee never requested an extension to file his reconsideration request and he did not give a reason for why his reconsideration request was late.

Even if DOHA had timely received the employee's reconsideration request, waiver would not have been available to him under 5 U.S.C. § 5584. In order to be considered for waiver, the debt must have resulted from an erroneous payment. *See* Instruction ¶ E2.1. In this case, the debt resulted from the reconciliation of the employee's LQA account. The employee had received an authorized advance payment of LQA in 2008 for the period 2008 through 2010.

When he resigned in October 2009, a reconciliation was conducted and it was determined that the employee owed \$52,028.11 for the unearned portion of the advanced LQA. Therefore, the resulting debt cannot be considered for waiver because the advance LQA payment was proper when made. Payment of LQA is governed by 5 U.S.C. §§ 5922-5923, and by implementing regulations issued by the Department of State. The statute, 5 U.S.C. § 5922(b), anticipates that periodically a reconciliation of the employee's LQA account is performed, after which the employee is required to repay the amount which he received that exceeds his allowable expenses. Thus, we have held that 5 U.S.C. § 5584 does not apply to the excess of LQA received unless the LQA payments were made erroneously. *See* DOHA Claims Case No. 2015-WV-111901.2 (December 29, 2016); DOHA Claims Case No. 2015-WV-031003.2 (December 10, 2015); and 2014-WV-081901.2 (June 10, 2015).

### **Conclusion**

The employee's request for reconsideration is untimely. In accordance with the Instruction ¶ E8.10, the appeal decision dated December 7, 2017, is the final administrative decision 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: Ray T. Blank, Jr.

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Member, Claims Appeals Board