

KEYWORDS: waiver of indebtedness; timeliness

DIGEST: Under the provisions of Department of Defense Instruction 1340.23, the Defense Office of Hearings and Appeals generally 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.

CASENO: 2009-WV-092502.2

DATE: 3/23/2010

DATE: March 23, 2010

)	
In Re:)	
[REDACTED])	Claims Case No. 2009-WV-092502.2
)	
Claimant)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Under the provisions of Department of Defense Instruction 1340.23, the Defense Office of Hearings and Appeals generally 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.

DECISION

An employee requests reconsideration of the February 5, 2010, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 09092502. In that decision DOHA sustained the initial determination of the Defense Finance and Accounting Service (DFAS) denying waiver of the employee’s indebtedness.

Background

The record shows that a Notification of Personnel Action (SF-50) issued on March 11, 2008, granted the employee, a Nuclear Engineer, GS-07, step 10 (\$52,046.00 per annum), a promotion to a GS-09, step 5 (\$57,046.00 per annum). However, the Defense Finance and Accounting Service (DFAS) later determined that the employee's salary should have been established as a GS-09, step 3 (\$54,392.00 per annum). Due to this administrative error, the employee's salary was miscalculated during the pay period ending March 15, 2008, through February 28, 2009, causing an overpayment of \$3,203.52.

The employee was notified of the error by his Human Resource Service Center on March 3, 2009. The member requested waiver of the amount on March 19, 2009. DFAS made an administrative determination on August 21, 2009 and denied waiver of the indebtedness. The employee requested an appeal to this Office on September 15, 2009, and DFAS forwarded the request to DOHA on September 22, 2009. Additional information was requested from DFAS on October 5, 2009, which DFAS submitted on February 5, 2010. DOHA sustained the initial determination of DFAS denying waiver of the indebtedness. In the appeal decision the DOHA adjudicator sustained DFAS's initial determination denying waiver of the debt because the employee knew or should have known the overpayment to be in excess of his proper entitlement. The adjudicator found that collection of the overpayment would not be against equity and good conscience, nor would it be contrary to the best interests of the United States. At the end of the appeal decision, the adjudicator advised the employee that he might request reconsideration of the decision, but that DOHA must actually receive his request within 30 days of the date of the decision. The adjudicator provided DOHA's mailing address, and also provided a fax number to which the employee could send a signed copy of his request (followed by an immediate transmission of the original by first class mail) to assure receipt by DOHA within the 30-day time limit. On March 18, 2010, DOHA received a two-page fax message, dated March 17, 2009, from the employee requesting that DOHA reconsider the decision. No request for an extension of the time limit had been received at DOHA prior to this request.

Discussion

The employee's request for reconsideration is untimely. The Department of Defense Instruction 1340.23 ¶ E8.12 (February 14, 2006), requires that such a request be received within 30 days of the issuance of the appeal decision. An extension of 30 days may be granted for good cause shown. The employee did not request an extension of the 30-day time limit. His request for reconsideration was received on March 18, 2010. In order for the request to be timely, since the appeal decision was issued on February 5, 2010, the reconsideration request would have had to have been received at DOHA by March 8, 2010 (March 7, 2010, being the 30th day and falling on a Sunday).

Conclusion

The employee's request for reconsideration is untimely; accordingly, the February 5, 2010, appeal decision is the final administrative decision of the Department of Defense in this matter. *See* DoD Instruction 1340.23 ¶ E8.10.

///Original Signed///

Michael D. Hipple
Chairman, Claims Appeals Board

///Original Signed///

Jean E. Smallin
Member, Claims Appeals Board

///Original Signed///

Natalie Lewis Bley
Member, Claims Appeals Board

