

KEYWORDS: waiver of indebtedness; untimely

DIGEST: 1. 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 denying waiver of an overpayment within 30 days of the appeal decision.
2. Financial hardship is not a factor for consideration in determining whether a waiver is appropriate.

CASENO: 07050109

DATE: 5/8/2007

DATE: May 8, 2007

In Re:)
 [REDACTED]) Claims Case No. 07050109
)
Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

1. 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 denying waiver of an overpayment within 30 days of the appeal decision.

2. Financial hardship is not a factor for consideration in determining whether a waiver is appropriate.

DECISION

An employee of the Army requests that we reconsider the March 13, 2007, appeal

decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 07012409. In that decision, DOHA sustained the initial decision of the Defense Finance and Accounting Service (DFAS) to deny the employee waiver relief from a debt he incurred as the result of an overpayment of his salary.

Background

The record shows that on December 19, 2001, the employee elected Federal Employee's Health Benefits (FEHB). The coverage became effective December 30, 2001. Due to administrative error, the government failed to withhold FEHB premiums from the employee's salary. As a result, he was overpaid \$8,821.31 from December 30, 2001, through March 19, 2005. In the appeal decision, our adjudicator advised the claimant that under DoD Instruction 1340.23 (Instruction), ¶ E8.12, DOHA may accept a request for reconsideration from him, but that such a request had to be received by DOHA within 30 days from the date of the March 13, 2007, decision. DOHA received the claimant's request for reconsideration on April 30, 2007. On reconsideration the employee again stresses that the government shares part of the blame in this case because it erroneously did not deduct the FEHB premiums from his salary and that repayment of the debt is causing financial hardship for his family.

Discussion

The claimant's request for reconsideration is untimely. While the 30-day receipt requirement may be extended an additional 30 days for good cause, the claimant neither demonstrated good cause nor demonstrated a colorable claim for relief under 5 U.S.C. § 5584. The Standards for Waiver Determinations at Enclosure 4 of the Instruction indicate that government error in the overpayment is not a basis by itself for waiver relief, and that waiver relief is not available when there is any indication that the claimant is partially at fault. *See* Instruction ¶¶ E4.1.2 - E4.1.3. The Standards also specifically state that financial hardship is not a factor in determining whether it is appropriate to grant waiver relief. *See* Instruction ¶ E4.1.7. The employee should contact DFAS to discuss the possibility of extended repayment arrangements.

Conclusion

The employee's request for reconsideration is denied, and we affirm the March 13, 2007, appeal decision in DOHA Claim No. 07012409 disallowing the waiver. In accordance with ¶ E8.15 of the Instruction, this is the final administrative action of the Department of Defense in this matter.

Signed: Michael D. Hipple

Michael D. Hipple
Chairman, Claims Appeals Board

Signed: Jean E. Smallin

Jean E. Smallin
Member, Claims Appeals Board

Signed: Catherine M. Engstrom

Catherine M. Engstrom
Member, Claims Appeals Board