

KEYWORDS: waiver of indebtedness-receipt of reconsideration requests within 30 days

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 appeal decision.

CASENO: 07082201

DATE: 8/29/2007

DATE: August 29, 2007

_____)
In Re:)
 [REDACTED]) Claims Case No. 07082201
)
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 appeal decision.

DECISION

An employee of the Department of Defense requests reconsideration of the July 17, 2007, decision of the Defense Office of Hearings and Appeals in DOHA Claim No. 07071202. In that decision, DOHA's adjudicators sustained an initial determination of the Defense Finance and Accounting Service (DFAS) that denied waiver of an indebtedness of \$13,015.24 that resulted from the overpayment of her salary.

Background

The record shows that effective May 27, 2006, the employee transferred from the Department of the Navy to the Department of Defense . However, due to administrative error, she erroneously received salary payments from the Navy from May 28, 2006, through July 22, 2006. As a result, she was overpaid in the gross amount of \$13,015.24.

In the appeal decision, DOHA's adjudicator noted the employee's diligence in informing DFAS of the error, and recognized the administrative delay in correcting it. In her reconsideration request, the employee indicates that she knew that the salary payments were erroneous, set the money aside for repayment, and notified DFAS in sufficient time for it to recover the erroneous withholding from the tax authorities. However, instead of correcting the error as soon as the employee had notified it, DFAS delayed in correcting the problem for such a lengthy period of time that too much time had passed (10 months) to adjust the withholding administratively. Thus, she became responsible not only for the amount she set aside for repayment, but the amount that DFAS forwarded to the taxing authorities in error on her behalf. The employee believes that the amounts forwarded to the tax authorities should be waived.

In the appeal decision, DOHA's adjudicator also advised the employee that she had the right to request reconsideration, but as specified in DoD Instruction 1340.23 (Instruction), ¶ E8.12 (February 14, 2006), the request actually had to be received by this Office within 30 days of the appeal decision. A fax number was provided to the employee to assist her in making a timely submission. The employee's faxed request for reconsideration was received in DOHA on August 22, 2007, and the original was received on August 24, 2007.

Discussion

The employee's request for reconsideration is untimely. While the 30-day receipt requirement may be extended an additional 30 days for good cause, the employee did not demonstrate good cause. This is dispositive of the request for reconsideration, but even if we could have considered the substance of the request, the employee did not demonstrate that (a) the findings in the appeal decision were unreasonable, or that (b) the conclusions drawn were arbitrary, capricious or contrary to law.¹

¹The DOHA adjudicator provided the employee with a copy of DOHA Claims Case No. 98040113 (July 8, 1998), *aff'd on reconsideration* by the Deputy General Counsel (Fiscal) on February 14, 2001. The Deputy General Counsel cited the Comptroller General's decision in B-261699, Oct. 25, 1996, a decision where partial waiver of salary overpayments to the extent of the tax withholding was considered. In discussing the Comptroller General's 1996 decision denying waiver, the Deputy General Counsel noted the Comptroller General's conclusion that the waiver statute applies to the aggregate amount of the overpayment, as well as his conclusion that there was a multitude of varying tax consequences that could arise.

Conclusion

The employee's request for relief is untimely; accordingly, the appeal decision is the final decision of the Department of Defense in this matter. *See* Instruction ¶ E8.10.

Signed: Michael D. Hipple

Michael D. Hipple
Chairman, Claims Appeals Board

Signed: Jean E. Smallin

Jean E. Smallin
Member, Claims Appeals Board

Signed: Christine M. Kopocis

Christine M. Kopocis
Member, Claims Appeals Board