

Background

On January 7, 2007, the employee transferred from the Army to the Air Force. Due to an administrative error, he continued to receive salary payments from the Army. As a result, he was overpaid in the gross amount of \$5,389.44.

In the appeal decision, the DOHA adjudicator sustained DFAS's initial determination denying waiver of the debt because the employee knew he was being overpaid. The adjudicator found that collection of the overpayment would not be against equity and good conscience, nor would it be contrary to the best interest 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 immediate transmission of the original by first class mail) to assure receipt by DOHA within the 30-day time limit. On August 26, 2008, our Office received the employee's reconsideration request by first class mail.

In his request for reconsideration, the employee states that he had to abide by a time limit of 30 days, while DOHA gave DFAS an unlimited period of time to provide DFAS's response.¹ He indicates that he was not at fault in the matter and therefore waiver should be granted.

Discussion

The employee's request for reconsideration is untimely, and we are not authorized to consider it. We must receive the request for reconsideration within 30 days of the issuance of the appeal decision. *See* Department of Defense Instruction 1340.23 (Instruction) ¶ E8.12 (February 14, 2006). The appeal decision was issued on June 30, 2008, and we received the request for reconsideration on August 26, 2008. The Instruction also provides that the deadline may be extended for an additional 30 days for good cause; but the employee failed to request an extension; and good cause is not shown on this record. This is dispositive of the employee's request for reconsideration.

Even if we could have considered the substance of the request, the employee failed to state a basis for relief under 5 U.S.C. § 5584 or the Instruction which implements it. The employee could not have been granted relief because he knew or should have known that he was not entitled to pay from the Army after he transferred. Instruction, ¶ E4.1.4. In effect, the

¹The record reflects that in February 2008 the DOHA adjudicator received the employee's appeal of DFAS's initial determination. The adjudicator subsequently asked for more information from DFAS. On May 30, 2008, the adjudicator advised DFAS and the employee that she was closing the case because DFAS did not respond to her request. However, she stated that when DFAS received the information requested, DFAS might request that DOHA reopen the claim for review.

employee is arguing that he should be granted relief because DFAS committed error by not timely processing his waiver request. The Standards for Waiver Determinations in Enclosure 4 of the Instruction do not provide for waiver relief on this basis. Although the employee claims that DFAS caused him “extreme and unreasonable” hardship by its dilatory response to the DOHA discovery request, he does not explain how he was harmed. The record shows that DFAS finally complied with DOHA’s discovery request, and the employee’s waiver request was fully considered in accordance with the Instruction.

Conclusion

The employee’s request for reconsideration is untimely; accordingly, the June 30, 2008, appeal decision is the final decision of the Department of Defense in this matter. *See* DoD Instruction 1340.23 ¶ 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: Catherine M. Engstrom

Catherine M. Engstrom
Member, Claims Appeals Board