

KEYWORDS: waiver of indebtedness; timeliness of reconsideration request; good cause

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. This period may be extended for an additional 30 days for good cause shown.

CASENO: 09042904

DATE: 5/07/2009

DATE: May 7, 2009

_____)
In Re:)
 [REDACTED]) Claims Case No. 09042904
)
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. This period may be extended for an additional 30 days for good cause shown.

DECISION

An employee requests reconsideration of the March 10, 2009, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 08100701. 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 on December 9, 2007, the employee transferred from the Air Force to the Department of Veterans Affairs. Due to an administrative error, the employee erroneously received 80 hours of salary from the Air Force for an overpayment of \$4,024.00. Also, the employee erroneously received an incentive award in the amount of \$177.00. As a result, she was overpaid in the gross amount of \$4201.00.

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 her 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 she might request reconsideration of the decision, but that DOHA must actually receive her 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 her 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 April 1, 2009, DOHA received the following one page fax message, dated March 30, 2009, from the employee, "Comments: I have received an emailed copy of the Appeal Decision today 30 March 09. I am writing this to ensure my 30 days to file the appeal along with a 30 day extension. I have not received the original package. Please forward to [new address]."

The adjudicator immediately faxed the following reply to the employee: "[R]eference to your fax received April 2, 2009, requesting what appears to be a 30 day extension. Please refer to our appeal decision 08100701, page 3, 2nd full paragraph, where we stated 'We may extend this period for up to an additional 30 days for good cause shown, if the request for an extension of time is actually received within the original 30 days.' In your fax, you did not state a 'GOOD CAUSE'. Therefore, we must receive your request (with GOOD CAUSE) by April 11, 2009. Regarding your statement 'I have not received the original package', a copy of our appeal decision was sent to [address] which is the address that was listed on your Request for Waiver (DD Form 2789). A copy of our appeal decision is attached."

The request for reconsideration with no further explanation regarding good cause was dated April 27, 2009, and received by DOHA on April 29, 2009.

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 requested a 30-day extension within 30 days, but she was notified by the appeal decision, and by fax dated April 2, 2009, that her request had to state good cause in

order for the deadline to be extended. Good cause was not submitted and is not shown on this record.¹

Conclusion

The employee's request for reconsideration is untimely; accordingly, the March 10, 2009, appeal decision is the final administrative decision of the Department of Defense in this matter. *See* DoD Instruction 1340.23 ¶ E8.10.

///Original Signed///

Jean E. Smallin
Acting Chairman, Claims Appeals Board

///Original Signed///

Natalie Lewis Bley
Member, Claims Appeals Board

///Original Signed///

Catherine M. Engstrom
Member, Claims Appeals Board

¹The employee's submission of April 27, 2009, deals with the accrual and validity of her debt, rather than the waiver process. Our Office has no authority to adjudicate the validity of the employee's debt. Questions regarding the validity of the debt must be resolved by the agency involved. *See* DOHA Claims Case No. 07051606 (May 16, 2007).

