

KEYWORDS: Overpayment, Military separation

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: 2017-WV-110901.2

DATE: 12/18/2018

DATE: December 18, 2018

In Re:)

[REDACTED])

Claimant)

) Claims Case No. 2017-WV-110901.2

**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

A former member of the Army National Guard requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2017-WV-110901, dated June 8, 2018.

Background

The member was called to perform active duty service from January 5, 2010, through December 23, 2010. On December 3, 2010, he was notified that he would be granted a discharge in lieu of trial by court-martial, and effective December 3, 2010, he would be reduced to the grade of an E-1. On December 22, 2010, the member electronically signed the *Certificate of Release or Discharge from Active Duty*, DD Form 214, acknowledging his discharge from the service effective December 22, 2010. The DD Form 214 reflected his pay grade as E-1. Effective December 23, 2010, the member was no longer entitled to receive military pay and allowances. However, due to an administrative error, the member erroneously continued to receive the pay of an E-8, and he erroneously continued to receive pay and allowances after his discharge. As a result, the member was overpaid \$19,340.95 during the period December 3, 2010, through June 15, 2011. However, the member only requested waiver of a portion of the overpayment in the amount of \$15,311.49 which occurred during the period January 1, 2011, through June 15, 2011.

In the appeal decision, the DOHA adjudicator explained the overpayment in significant detail. The adjudicator denied waiver of the overpayment because the member was provided sufficient documentation reflecting that he was no longer entitled to receive pay and allowances as an E-8 effective December 3, 2010, and that he was discharged on December 22, 2010. The adjudicator further advised the member that he may request reconsideration of the appeal decision, but that DOHA must actually receive the request within 30 days of the date of the appeal decision in accordance with DoD Instruction 1340.23 (Instruction) (February 14, 2006). She further advised the member that DOHA could extend the deadline for up to an additional 30 days if the member shows good cause; and to facilitate a timely response, she provided a fax number to which the member could fax his reconsideration request.

On November 8, 2018, the member faxed his request for reconsideration to DOHA. He stated that he did not receive the appeal decision dated June 8, 2018, until after the 30-day deadline because he spent most of his summer working in another state.

Discussion

Under Instruction ¶ E8.12, the DOHA must receive a request for reconsideration within 30 days of the date of the appeal decision. The DOHA may extend this period for up to an additional 30 days for good cause shown, but no request for reconsideration may be accepted after this time has expired. A request for reconsideration must be sent to DOHA at the address listed in Instruction ¶ E8.5. The appeal decision explained these requirements to the member in specific detail. Although the member may have been working out of state when the appeal decision was sent to him, he waited until five months after the date of the appeal decision to request reconsideration. More than 60 days has passed from the date of the appeal decision. Under the circumstances, the Board no longer has authority under the Instruction to consider the member's request for reconsideration. *See* DOHA Claims Case No. 2016-WV-030807.2 (January 30, 2017); DOHA Claims Case No. 2016-WV-030701.2 (October 20, 2016); and DOHA Claims Case No. 2014-WV-120803.2 (March 9, 2016).

Even if DOHA had the authority to review the member's case on the merits, it would be unlikely he would have prevailed. The member was notified on December 3, 2010, that he had been reduced in rank to an E-1, effective December 3, 2010. In addition, he received and acknowledged his discharge by virtue of the DD 214 which reflected his discharge date and his reduction in rank. *See* Comptroller General decision B-186149, May 20, 1976.

Conclusion

The member's request for reconsideration is untimely. In accordance with ¶ E8.10 of the Instruction, the appeal decision dated June 8, 2018, is the final decision of the Department of Defense on the member's waiver request.

SIGNED: Catherine M. Engstrom

Catherine M. Engstrom
Chairman, Claims Appeals Board

SIGNED: Charles C. Hale

Charles C. Hale
Member, Claims Appeals Board

SIGNED: Gregg A. Cervi

Gregg A. Cervi
Member, Claims Appeals Board

