

DATE: January 30, 2017

In Re:)

[REDACTED])

) Claims Case No. 2016-WV-030807.2

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. 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 member of the U.S. Navy requests reconsideration of the June 17, 2016, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2016-WV-030807. In that decision, DOHA sustained the Defense Finance and Accounting Service's (DFAS's) denial of the member's request for waiver.

Background

The member was married and properly receiving basic allowance for housing at the dependent rate (BAH-D) on behalf of his spouse. On June 29, 2011, the member was divorced, and as a result, he was no longer entitled to receive BAH-D. However, due to an administrative error, he erroneously received BAH-D during the period June 30, 2011, through August 28, 2013, causing an overpayment of \$54,746.70. During the period of overpayment, since the member was providing child support, he was entitled to receive BAH at the differential rate (BAH-Diff) in the amount of \$6,296.32. That amount was applied to the overpayment, reducing it to \$48,450.38.

In the appeal decision, the adjudicator followed the recommendation of the Defense Finance and Accounting Service (DFAS) upholding DFAS's denial of the member's waiver request. The adjudicator noted that the member received leave and earnings statements (LES's) during the period of overpayment. In reviewing the member's LES's, the adjudicator found that after his divorce, they continued to reflect that the member was receiving BAH-D on behalf of his spouse. The adjudicator cited long-standing precedent that a member has a duty to carefully examine the pay documentation given to him, report any errors, and set aside the funds for subsequent refund to the government. Since the member failed to do so, waiver is not appropriate. 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 January 3, 2017, the member faxed a request for a 30-day extension to file his reconsideration request. He stated that he did not timely receive the June 17, 2016, appeal decision because he was deployed.

Discussion

Under Instruction ¶ E8.12, DOHA must receive a request for reconsideration within 30 days of the date of the appeal decision. 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 June 17, 2016, appeal decision explained these requirements to the member in specific detail. Although the member was deployed when the appeal decision was sent to him, he returned from deployment on September 30, 2016. More than 60 days has passed from the date of his return and January 3, 2007, when DOHA received his faxed request for an extension to file his reconsideration request. 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-030701.2 (October 20, 2016); and DOHA Claims Case No. 2014-WV-120803.2.

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 received LES's after his divorce reflecting that he was being paid BAH-D on behalf of his spouse. He had a duty to review his LES's and bring any discrepancies to the attention of the proper officials. Since he failed to do so, waiver is not appropriate.

Conclusion

The member's request for reconsideration is untimely. In accordance with ¶ E8.10 of the Instruction, the June 17, 2016, appeal decision 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: Natalie Lewis Bley

Natalie Lewis Bley
Member, Claims Appeals Board

Signed: William S. Fields

William S. Fields
Member, Claims Appeals Board