

DATE: September 30, 2011

In Re:)
 [REDACTED]) Claims Case No. 2011-CL-071501.2
)
Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Under the provisions of the Department of Defense Instruction 1340.21, 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. No request for reconsideration may be accepted after this time has expired.

DECISION

A member of the U.S. Air Force requests reconsideration of the August 25, 2011, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2011-CL-071501. In that decision, DOHA sustained the initial determination of the Defense Finance and Accounting Service (DFAS), disallowing the member's claim for reimbursement of \$1,750.00 in rent he forfeited as a result of his amended permanent change of station (PCS).

Background

The record reflects that the member received orders dated April 1, 2010, directing him to perform a permanent change of station (PCS) move from Alaska to Louisiana no later than August 16, 2010. The member was granted permissive temporary duty (TDY) for a house

hunting trip (HHT) in Louisiana in April 2010. On June 10, 2010, the member signed a tenancy agreement for a one-year lease of a house in Louisiana commencing on August 1, 2010. The lease established the rent at \$1,750.00 per month and required a security deposit of \$1,650.00. The member paid the security deposit and the first month's rent by check dated June 3, 2010, in the amount of \$3,400.00. The member's orders were amended on July 29, 2010, changing his new permanent duty station (PDS) from Louisiana to Texas. The member received notification of this change on July 28, 2010, while traveling to Louisiana. The member's \$1,650.00 security deposit was returned to him on September 17, 2010. However, the lessor retained the \$1,750.00 for the first month's rent for lack of 30 days' notice. The member claimed reimbursement for the \$1,750.00 rental payment, and his command's travel office subsequently denied the claim. In its initial determination, DFAS advised the member that reimbursement for the rental payment was not payable under volume 1 of the Joint Federal Travel Regulations (1 JFTR), because a second dislocation allowance (DLA) cannot be paid if the member has not completed the PCS to the original PDS.

Our adjudicators explained that reimbursement for the forfeited month's rent is prohibited unless authorized by statute or regulation, and that 1 JFTR, the regulation which governs this matter, does not authorize it. In reaching this conclusion, our adjudicators examined six types of allowances under 1 JFTR to determine whether any would apply to at least partially reimburse the member for his forfeited month's rent. The adjudicators noted, among other things, that the purpose of DLA is to partially reimburse the member for miscellaneous expenses incurred in moving a household incident to a PCS; that 1 JFTR U5630-B6 applies to the payment of DLA when the new PDS in a PCS is changed; and that U5630-B6 requires that the member actually complete a move to a new location before the orders are amended directing him to a different PDS in order to receive DLA in connection with each move. The adjudicators concluded that since the member did not complete the move to the Louisiana before he received email notification directing him to report to Texas rather than Louisiana, payment of DLA incident to his cancelled move to Louisiana was not payable. Finally, our adjudicators advised the member that under Department of Defense Instruction (Instruction) ¶E7.13 (May 12, 2004), DOHA may accept a request for reconsideration from the member, but that such a request had to be received by DOHA within 30 days from the date of the August 16, 2011, appeal decision. The adjudicators noted that time may be extended for good cause and provided a fax number to reach our Office to help the member avoid forfeiting his rights due to a late response. The record reflects that the member emailed his request for reconsideration of our appeal decision to DFAS on September 16, 2011, along with attachments. On September 22, 2011, our Office received from DFAS by mail the member's request for reconsideration with attachments.

Discussion

The member's request for reconsideration and any supporting documentation had to be received by this Office no later than 30 days from the date of the appeal decision, *i.e.*, September 15, 2011. While the 30-day requirement may be extended for an additional 30 days for good cause, the member made no timely request for an extension. His request for reconsideration is

silent on his failure to comply with the 30-day receipt requirement. In addition, the member was required to file his request for reconsideration with our Office, not DFAS.¹ DOHA must receive a request for reconsideration within 30 days of the date of the appeal decision. *See* Department of Defense Instruction (Instruction) ¶ E7.13 (May 12, 2004). Therefore, the member's request for reconsideration is untimely, and we are not authorized to consider it. Even if we could consider it, as explained by our adjudicators in the appeal decision, our Office has authority to allow a claim only when payment is authorized by statute or regulation. *See* DOHA Claims Case No. 07042414 (May 4, 2007).

Conclusion

The member's request for reconsideration is denied, and we affirm the August 16, 2011, appeal decision in DOHA Claim No. 2011-CL-071501, disallowing the claim. In accordance with DoD Instruction 1340.21 ¶ E7.15.2, this is the final administrative action of the Department of Defense in this matter.

Signed: Jean E. Smallin

Jean E. Smallin
Chairman, Claims Appeals Board

Signed: Catherine M. Engstrom

Catherine M. Engstrom
Member, Claims Appeals Board

Signed: Natalie Lewis Bley

Natalie Lewis Bley
Member, Claims Appeals Board

¹We note that the member emailed his reconsideration request to DFAS. The member was instructed to either mail, or to fax and immediately mail, the reconsideration request to DOHA. *See* Instruction ¶ E7.13.