

KEYWORDS: military member claim; adoption expenses

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.

CASENO: 2011-CL-020701.2

DATE: 5/19/2011

DATE: May 19, 2011

---

In Re:	)	
[REDACTED]	)	Claims Case No. 2011-CL-020701.2
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. Navy requests reconsideration of the March 8, 2011, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2011-CL-020701. In that decision DOHA sustained the determination of the Defense Finance and Accounting Service (DFAS) that claimed daycare expenses in the amount of \$4,800.00 are not qualifying expenses which are "reasonable and necessary" and "directly related" to the adoption process as defined by 10 U.S.C. § 1052(g) and the Department of Defense Financial Management Regulation (DoDFMR), Vol. 7A, Appendix A, and are therefore not reimbursable.

## Background

The record shows that the appeal decision in this case was issued March 8, 2011. On April 25, 2011, the member's spouse on the member's behalf sent a letter by fax and U.S. mail to DOHA requesting an additional 30 days to request reconsideration.<sup>1</sup> On April 26, 2011, DOHA granted the request and informed the member's spouse by email and sent the original hard copy letter. In part the letter stated:

Your request for extension is granted. The extended response period expires on Monday, May 9, 2011; your reconsideration submission, including any attachments or enclosures containing new evidence, must actually be received by this Office no later than that date. Unfortunately, this deadline is prescribed in DoD Instruction 1340.21 and cannot be further extended.

You may submit your request for reconsideration by fax to us at 703-696-1843. If you do so, then the original hard copy of your reconsideration package must be immediately transmitted by first class mail.<sup>2</sup>

On May 9, 2011 the member's spouse emailed a copy of the request for reconsideration with attachments (which is dated May 8, 2011) to the adjudicator in our Office who had written the appeal decision.<sup>3</sup> On May 10, 2011, the 8-page reconsideration letter with no attachments was faxed to this Office.<sup>4</sup> Significantly, the appeal letter advised the member that he could request reconsideration of the decision, but that DOHA must actually receive the request within 30 days of the date of the decision. The letter granting the extension stated the new date by which the reconsideration request had to be received. The adjudicator provided the specific address to which the member had to send his request, and also provided a fax number to which the member could send a signed copy of the request (followed by immediate transmission of the original by first class mail) to assure receipt by DOHA within the time limit in both the appeal letter and the letter granting the extension.

## Discussion

---

<sup>1</sup> The member's spouse complained that the letter had been addressed to the member and she had not opened it. The member is stationed geographically separate, and when he returned home and opened the mail, they only had 48 hours remaining to respond. The member's spouse questioned why it had not been addressed to her also, as she had provided a Power of Attorney (POA). Our Office responded to her that no POA was in the package of materials provided to our Office.

<sup>2</sup> The letter also requested that the member's spouse provide our Office with a copy of the POA, as our file does not contain a copy of the document.

<sup>3</sup> The member's spouse stated in the email, "Attached please find the [redacted] appeal letter to meet the timed deadline established by DOHA. Is it necessary that this letter be faxed to your attention as well, or will the email version of today's date suffice? . . .By rule, I understand that I am to mail the documents by US mail not later than tomorrow."

<sup>4</sup> A note dated May 9, 2011, handwritten on the front of the first page stated, "This letter was emailed to [redacted] yesterday. He has not responded to either of my two emails regarding a need to subsequently fax it as well. Therefore, I am faxing it to your attention. The letter & attachments have also been placed in US mail."

The member's request for reconsideration had to be received by this Office no later than May 9, 2011. That requires that the request including all attachments or enclosures physically arrive at this Office before or on that date. As a convenience, claimants may fax the appeal along with all attachments before or on that date and immediately mail the documents to this Office. We do not accept email transmissions of appeals. The directions in the original letter of March 8, 2011, as well as the letter of extension dated April 26, 2011, were both the same and were very clear.

The claimant's request for reconsideration was emailed to an adjudicator of this Office on May 9, 2011. At this stage of the process, the claimant is requesting action from the Claims Appeals Board, not an adjudicator. Additionally, both letters clearly instructed the claimant to either mail, or to fax and immediately mail, the documents. Email is not a recognizable form of communication to DOHA during the formal reconsideration process. The fax that arrived in this Office a day late, May 10, 2011, also was only the initial request for reconsideration. No attachments were included, although it would not have changed the fact that the request was untimely. The claimant was given the consideration of an extension of 30 days and failed to meet the extended deadline. No request for reconsideration may be accepted after time has expired. *See* DoD Instruction 1340.21, § E7.13.

The member's request for reconsideration is untimely, and we are not authorized to consider it. This is dispositive of the request for reconsideration. *See* DOHA Claims Case No. 2010-WV-081001.2 (October 27, 2010); DOHA Claims Case 2010-WV-042601.2 (September 21, 2010); and DOHA Claims Case No. 07100103 (October 10, 2007).

Even if DOHA had timely received the member's request for reconsideration, the claim would not have been allowed in these circumstances under 10 U.S.C. § 1052(g)(1) and Department of Defense Financial Management Regulation (DoDFMR), Vol. 7A, Appendix A.<sup>5</sup> It is well-established that the interpretation of a statutory provision, as expressed in the implementing regulations by the agency responsible for execution of the statute, is entitled to great deference and will be sustained and deemed to be consistent with Congressional intent unless found to be arbitrary, capricious, an abuse of discretion or contrary to the statutory purpose. *See* DOHA Claims Case Nos. 02101611 through 02101635 (December 12, 2002). The Secretary of Defense is required to prescribe regulations to carry out the program under which a military member may be reimbursed for adoption expenses, which are found in part in the DoDFMR.<sup>6</sup> DFAS determined that the member's claim for daycare expenses in the amount of \$4,800.00 for the period of March 2009 through September 2, 2009, are not qualifying expenses

---

<sup>5</sup> In accordance with 10 U.S.C. § 1052(g)(1), reimbursement is authorized for "qualifying adoption expenses" that are "reasonable and necessary" and directly related to the legal adoption of a child. The term "reasonable and necessary expenses" are defined under 10 U.S.C. § 1052(g)(2). The DoDFMR, Vol. 7A, Appendix A, subpara. A00601.E. further defines "reasonable and necessary expenses" as temporary foster care charges when payment of such charges is required to be made before the adoptive child's placement. Reimbursement is limited to not more than \$2000.00 per child. *See* 10 U.S.C. § 1052(e).

<sup>6</sup> DoD Instruction 1341.09 (Nov. 3, 2007), implements policy, assigns responsibility and prescribes procedures for the reimbursement of qualifying adoption expenses incurred by members of the military services. Under the Instruction, the Comptroller has been delegated the responsibility for proscribing and implementing procedures for the paying of claims for reimbursement. The Comptroller has set forth these procedures in the DoDFMR.

which are “reasonable and necessary” and “directly related” to the adoption process as defined by the statute. In fact, the administrative report contains a lengthy explanation of this determination written by the DFAS Office of General Counsel, dated November 9, 2010. This Office finds the report quite persuasive, and certainly not arbitrary, capricious, an abuse of discretion or contrary to the statutory purpose.<sup>7</sup>

Both the DFAS Administrative Report and the DOHA Appeal Decision cite Comptroller General Decision B-235606, Feb. 7, 1991, as a basis for denial of the member’s claim. While the member’s spouse attempts to distinguish that decision from the case before us based on minor factual differences, she is not persuasive. That decision clearly states the general principle that ordinary child-care expenses are not related to the adoption process; and therefore, are not reimbursable as adoption expenses. The child-care expenses claimed are ordinary expenses of child-rearing as discussed in that decision.

A large part of the argument put forward by the member is that the daycare costs should be payable under the laws of the State of Florida. The benefit being claimed is based on federal law and applicable federal regulations. Federal law and implementing regulations determine the member’s entitlement. State law is irrelevant to this matter.

### **Conclusion**

The member’s request for reconsideration is untimely, and in accordance with DoD Instruction 1340.21, § E7.11, the March 8, 2011, appeal decision is the final administrative action of the Department of Defense in this matter.

Signed: Jean E. Smallin

---

Jean E. Smallin  
Acting Chairman, Claims Appeals Board

Signed: Catherine M. Engstrom

---

Catherine M. Engstrom  
Member, Claims Appeals Board

Signed: Natalie Lewis Bley

---

<sup>7</sup> The member’s spouse has argued that there are two factual errors in the appeal decision relating to her relationship to the adoptive children, and the fact that the children are fraternal and not identical twins. Neither of these facts bears any relation to the ultimate decision of DFAS, the appeal decision, or this decision.

Natalie Lewis Bley  
Member, Claims Appeals Board