DATE: October 20, 2016

	)
In Re:	)
[REDACTED]	) Claims Case No. 2016-WV-030701.2
Claimant	)
	)

CLAIMS APPEALS BOARD
RECONSIDERATION DECISION

DIGEST

Waiver of an overpayment of basic allowance for housing at the dependent rate is appropriate only to the extent that the overpayment was spent for its intended purpose.

Under DoD Instruction 1340.23 ¶ E8.12 (February 14, 2006), the Defense Office of Hearings and Appeals (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 ¶ E8.12.

DECISION

A member of the U.S. Navy requests reconsideration of the June 2, 2016, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2016-WV-030701. In that decision, DOHA waived in part the collection of a debt owed by the member.

Background

The member was receiving basic allowance for housing at the dependent rate (BAH-D) on behalf of his spouse. On May 17, 2013, he was divorced. Therefore, he was no longer entitled to receive BAH-D. However, due to an administrative error, the member's pay records were not updated to reflect his divorce. As a result, the member erroneously received BAH-D from May 18, 2013, through January 31, 2015, causing an overpayment of $43,957.50. During this period, the Defense Finance and Accounting Service (DFAS) determined that the member

was entitled to receive BAH at the partial rate (BAH-P) in the amount of $1,299.01, which was applied to the BAH-D debt, reducing it to $42,658.49 ($43,957.50 - $1,299.01).

In the appeal decision, the DOHA adjudicator disagreed with DFAS's recommendation to deny the full amount of the debt. The adjudicator found that the member may not have been aware that he was erroneously receiving BAH-D during the period May 18, 2013, through September 30, 2014. During this period, the adjudicator found evidence that the member used $25,068.50 of the erroneous BAH-D for its intended purpose. However, the adjudicator further found that since there was no indication that the member used the remaining $8,882.79 of the erroneous BAH-D he received during the period May 18, 2013, through September 30, 2014, for its intended purpose, waiver was not appropriate. Further, since the member was notified he was not entitled to receive BAH-D on October 14, 2014, the adjudicator denied waiver of the $8,707.20 he received in erroneous BAH-D after notification for the period October 1, 2014, through January 31, 2015. Thus, the adjudicator waived the amount of $25,068.50, but denied waiver of $17,589.99 ($8,882.79 + $8,707.20). The adjudicator also 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. She further advised the member that DOHA could extend this 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 September 3, 2016, the member emailed his administrative personnel office requesting that they forward his appeal of the denial of his waiver request to DOHA. He attached supporting documentation. His administrative personnel office forwarded the member's email and supporting documentation to DOHA by email on the same day. In the administrative personnel office's email, DOHA was asked to accept additional documents in the member's case. DOHA was also advised that the member was deployed serving in a combat zone.

Discussion

Under DoD Instruction 1340.23 ¶ 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 ¶ E8.5 of the Instruction. The June 2, 2016, appeal decision explained these requirements to the member in specific detail. More than 60 days passed between June 2, 2016, and September 3, 2016, and the Board no longer has authority under the Instruction to consider the member's request for reconsideration.[1]

Even if DOHA had the authority to review the member case on the merits, it would be unlikely he would have prevailed. The adjudicator waived the portion of the debt prior to notification based on evidence that the member used the amount for its intended purpose. In his

---

[1]In addition, the member never requested an extension to file his reconsideration request and he did not give a reason for why his reconsideration request was late. Further, the member did not conform with the instruction to mail his reconsideration request to DOHA, and to this date, DOHA has not received his written request by mail.

reconsideration request, it appears that the member is claiming entitlement to BAH at the single rate (BAH-S) during the overpayment period plus a period of time outside this period. Our decision in this matter pertains to the equitable remedy of waiver. It does not extend to an adjudication of the validity of the debt or the member's assertion that he is entitled to BAH-S. The member may file a claim with DFAS for BAH-S, if he disputes the validity of the debt and/or is claiming an entitlement to BAH-S. *See* DOHA Claims Case No. 2009-WV-072701.2 (September 9, 2010); and DOHA Claims Case No. 07052910 (June 5, 2007).

Conclusion

The member's request for reconsideration is untimely. In accordance with ¶ E8.10 of the Instruction, the June 2, 2016, appeal decision is the final decision of the Department of Defense on the member's waiver request.

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