

DATE: January 22, 2007

In Re:

[REDACTED]

Claimant

)
Claims Case No. 06121101

CLAIMS APPEALS BOARD DECISION

DIGEST

On December 13, 2006, this Office declined to reconsider the member's waiver request because it was not submitted within 30 days of the date of the appeal decision. However, after further review of the record evidence as a whole, the member has shown good cause for the delay in submitting his reconsideration request, and we will thus consider the member's request for reconsideration.

DECISION

This responds to a request for reconsideration of Defense Office of Hearings and Appeals (DOHA) Appeal Decision, DOHA Claim No. 06100502 (October 23, 2006), in which we refused to reconsider the member's request for waiver of indebtedness because he did not submit his request within 30 days of the date of the appeal decision as stated under Department of Defense (DoD) Instruction 1340.23.

Background

The member is a master sergeant in the Air Force Reserves. On January 13, 2006, the Financial Services Office at Pope Air Force Base notified the member that he was indebted in the amount of \$15,987.40 for an outstanding travel debt. On January 20, 2006, the member applied for remission of the indebtedness. ⁽¹⁾ At some point the member was advised to fill out an application for waiver of the indebtedness by finance personnel at Pope Air Force Base. The member's Reserve unit address at Pope Air Force Base was listed as his current mailing address on the waiver application. On June 9, 2006, the Defense Finance and Accounting Service (DFAS) found that \$796.64 of the debt could not be considered for waiver, denied waiver of the remaining \$15,190.76, and advised the member of his right to appeal their decision to DOHA. On July 24, 2006, the member appealed DFAS's decision to DOHA. On October 23, 2006, our Office issued an appeal decision upholding DFAS's determination. On December 11, 2006, our Office received a faxed request for reconsideration from the member. On December 13, 2006, the member was advised by our Office that his request for reconsideration was not timely submitted as set forth under DoD Instruction 1340.23, that the appeal decision was the final administrative action in the matter, and that no further action would be taken on his application for waiver.

On December 26, 2006, the member requested we reconsider our decision not to reconsider his waiver request. He states that he was not expecting a decision from DOHA as soon as October. He was advised by DFAS via e-mail dated September 14, 2006, that it would take 45 to 60 days for the case to reach DOHA and 60 to 90 days for DOHA to issue a decision. He states that in November 2006 he was performing his annual reserve two-week commitment away from his unit. He did not receive the appeal decision until December when he returned to his Reserve unit at Pope Air Force Base for a unit training assembly (UTA). He states that by the time he received the appeal decision the 30-day time limit had already expired. The member suggests that DFAS was aware of his address since DFAS communicated with him by e-mail.

Discussion

Waiver procedures for debts resulting from erroneous pay and allowances are set forth in Department of Defense Instruction 1340.23, which was codified in the Code of Federal Regulations at 32 C.F.R. Part 284 on October 10, 2006. In this case, the member initiated his waiver request, and DFAS issued its initial determination, prior to the effective date of the change in the waiver regulations. The member's suggestion that we could have reached him by means of e-mail is not persuasive. Our Office has no means to communicate with claimants via e-mail that is sufficiently encrypted to protect privacy, and such communications are not recognized in Part 284. Therefore, the member was not advised of the new waiver procedures until the appeal decision was issued on October 23, 2006. The appeal decision was sent to his current mailing address, his Reserve unit address.⁽²⁾ However, he did not receive the decision until he returned to his unit after performing his annual training. Therefore, we find that, under the totality of the member's circumstances, good cause has been shown for an extension to the 30- day period to submit a request for reconsideration from the date of the appeal decision. Therefore, the member's case will be reconsidered and a separate decision by this Board will be issued on the merits.

Signed: Michael D. Hipple

Michael D. Hipple

Chairman, Claims Appeals Board

Signed: Jean E. Smallin

Jean E. Smallin

Member, Claims Appeals Board

Signed: Catherine M. Engstrom

Catherine M. Engstrom

Member, Claims Appeals Board

1. There is nothing in the record reflecting that the member's application for remission was considered. It appears that since the member was demobilized in March 2005 and was no longer on active duty, his case was considered as a waiver rather than a remission.
2. Members should give DFAS and DOHA their most recent mailing address. Reservists should not use their reserve unit address unless they receive personal mail at the reserve unit on a daily basis.