

DATE: April 6, 2007

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In Re:

[REDACTED]

Claimant

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Claims Case No. 07032401

## CLAIMS APPEALS BOARD

### RECONSIDERATION DECISION

#### DIGEST

DOD Instruction 1340.23 paragraph E8.12 provides that DOHA must receive a request for reconsideration of an appeal decision within 30 days of the date of the appeal decision. A claimant's argument that the 30 days should be measured from the date she receives the appeal decision, and not from the date of the appeal decision, is inconsistent with the plain meaning of the language in the Instruction. Our Office must actually receive the request within 30 days of the date of the appeal decision.

#### DECISION

A retired Army service member requests reconsideration of the February 21, 2007, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 07012213, in which DOHA denied waiver of an indebtedness which resulted from an overpayment of retired pay in the gross amount of \$1,969.28.

#### Background

The record shows that the member was discharged on August 8, 2003, and at that time was entitled to disability severance pay in the amount of \$17,493. Subsequently, the Army Board for Correction of Military Records approved the member's request to change her disability separation to a disability retirement. The member's records were corrected to show that she was placed on the Temporary Disability Retired List, effective August 9, 2003, with a disability rating of 40 percent. At that time, the member became entitled to retired pay. Consequently, the member became indebted for the disability severance pay. In June 2005, the Defense Finance and Accounting Service (DFAS) applied the retired pay the member was due from August 9, 2003, through April 30, 2005, in the net amount of \$1,052,69, to her debt for the disability severance pay, and this reduced her indebtedness to \$16,440.31. On September 22, 2005, our Office waived \$16,440.31, the balance of the indebtedness.

DFAS later determined that the member erroneously received a payment in the gross amount of \$1,969.28, on August 10, 2005, which represented an overpayment of retired pay for the period August 9, 2003, through October 31, 2003. Our adjudicator affirmed DFAS's determination to deny waiver of this overpayment, citing, among other things, an advisory to the member that no check would be issued in connection with the payment in issue. At the conclusion of the appeal decision, our adjudicator advised the member that she may request reconsideration of the denial of waiver, but that "our Office must actually receive the request within 30 days of the date of the appeal decision" in accordance with Department of Defense Instruction (Instruction) 1340.23. The appeal decision also advised the member that we could extend this deadline for up to an additional 30 days if the member shows good cause; and to facilitate a timely response, the decision provided a fax number to which the member could fax her reconsideration request.

The member provided a fax response on March 24, 2007, one day after the deadline. By letter dated March 26, 2007,

our Office advised the member that we had received her fax one day late and requested her explanation of the delay. By letter dated March 31, 2007, the member stated that she received the February 21, 2007, appeal decision on February 27<sup>th</sup>. She argues that she sent her reconsideration request to us within 30 days of her receipt of the appeal decision.

### **Discussion**

The preliminary issue here is whether the member complied with the 30-day deadline in the Instruction for requesting reconsideration. Paragraph E8.12 of the Instruction states:

"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. No request for reconsideration may be accepted after this time has expired. A request for reconsideration must be sent to the DOHA at the address in section E8.5."

In the absence of the claimant's showing of good cause to extend additional time, our Office has no authority to accept a request for reconsideration received after the 30<sup>th</sup> day after the issuance date of the appeal decision. The appeal decision in this case, and other appeal decisions issued by our Office, emphasize the importance of making sure that the claimant is aware that our Office "must actually receive the request within 30 days of the date of the appeal decision." To facilitate timely receipt, our Office provides a fax number for claimants who are close to the deadline and reminds claimants of the availability of an extension of time if they provide good cause.

In effect, the member argues that, despite the language in the Instruction, her 30 days to request reconsideration should start from whatever date she receives the appeal decision. The language of the Instruction, which controls our processing of any such request, is inconsistent with the member's position. Even if six days had elapsed between the date of the issuance of the appeal decision and her receipt of it, the member still had 24 days to make sure that our Office received her request for reconsideration or her request for additional time to file one.

### **Conclusion**

Our Office has no authority to consider the member's request for reconsideration. In accordance with paragraph E8.10 of the Instruction, the appeal decision is the final decision of the Department of Defense on the issue of whether to waive collection of the \$1,969.28 overpayment. However, this decision is not intended to prejudice the member's right to pursue other actions with respect to advancing her position concerning her account with DFAS.

Signed: Michael D. Hipple

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Michael D. Hipple

Chairman, Claims Appeals Board

Signed: Jean E. Smallin

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Jean E. Smallin

Member, Claims Appeals Board

Signed: Catherine M. Engstrom

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Catherine M. Engstrom

Member, Claims Appeals Board