



## Background

The amount of the debt that DOHA waived, which accrued before April 30, 2005, is not in issue. The following briefly summarizes the adjudicator's findings concerning the amounts not waived or considered: The member was discharged from the Army on May 6, 2005, and received all pay and allowances for his active duty service. However, due to administrative error, on May 15, 2005, the member received a mid-month payment in the amount of \$1,674.41. The adjudicator also found that the member had received a separation pay work-sheet which showed that he was not entitled to the \$1,674.41. While the member claimed that he thought he was entitled to \$863.26, the adjudicator found no evidence that the member reasonably believed that he was entitled to the \$1,674.41 he received. The adjudicator also concluded that the overpayment that resulted from 22.5 days of advance leave becoming excess due to the member's release from active duty is not an erroneous payment of pay and allowances, and may not be considered for waiver under 10 U.S.C. § 2774.

Significantly, at the end of the appeal decision, the adjudicator advised the member that he may request reconsideration of the decision, but that DOHA must actually receive his request within 30 days of the date of the decision. 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 his request (followed by immediate transmission of the original by first class mail) to assure receipt by DOHA within the 30-day time limit. Our records indicate no receipt of a request for reconsideration until September 4, 2007.

As we construe the member's request for reconsideration,<sup>1</sup> he contends that he was unable to keep up with his pay while deployed in Afghanistan. He received a lump sum payment of \$7,091.67 on March 15, 2005, while deployed there, without access to his leave and earnings statements. He states that he believed the remaining balance of \$1,647.41 "to be some sort of back pay."

## Discussion

The member's request for reconsideration is untimely, and we are not authorized to consider it. While the 30-day receipt requirement may be extended an additional 30 days for good cause, the member did not demonstrate good cause. His correspondence is silent on his failure to comply with the 30-day receipt requirement. No request for reconsideration may be accepted after this time has expired. *See* Department of Defense Instruction 1340.23 (Instruction) ¶ E8.12 (February 14, 2006). This is dispositive of the request for reconsideration. Even if we could have considered the substance of the request, the member did not demonstrate that the findings in the appeal decision were unreasonable, or that the conclusions drawn were

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<sup>1</sup>The request is in the form of a letter from the member to his Congressional Representative dated August 16, 2007. The Representative's office forwarded this letter through Army channels to the Defense Finance and Accounting Service.

arbitrary, capricious or contrary to law.<sup>2</sup>

### **Conclusion**

The member's request for reconsideration is untimely; accordingly, the appeal decision is the final decision of the Department of Defense in this matter. *See* Instruction ¶ E8.10.

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: William S. Fields

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William S. Fields  
Member, Claims Appeals Board

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<sup>2</sup>The member's argument that he was unable to keep up with his pay while deployed seems to make little sense in that the adjudicator had waived the overpayments which accrued during that period, and his belief that the \$1,647.41 was "some sort of back pay" is unsupported speculation.