

KEYWORDS: waiver of indebtedness

DIGEST: Under the provisions of Department of Defense Instruction 1340.23, 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 appeal decision.

CASENO: 07100103

DATE: 10/10/2007

DATE: October 10, 2007

In Re:	)	
[REDACTED]	)	Claims Case No. 07100103
Claimant	)	

**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

Under the provisions of Department of Defense Instruction 1340.23, 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 appeal decision.

**DECISION**

A former member of the United States Navy requests reconsideration of the August 23, 2007, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 07070602. In that decision, DOHA sustained in part the initial determination of the Defense Finance and Accounting Service (DFAS) denying any waiver relief of an indebtedness that the member had incurred during her service with the Navy.

## Background

The record shows that on December 3, 2002, the member enlisted in the United States Navy for four years, and on January 3, 2003, the member signed an agreement to extend her enlistment for a period of 12 months. As a result, she was entitled to receive a selective enlistment bonus (SEB) in the gross amount of \$16,000, which she subsequently received. The member was discharged on August 10, 2006, prior to completing her enlistment contract. This required recoupment of a *pro rata* portion of the SEB in the amount of \$4,195.56. DOHA's adjudicator found that at the time of her separation, the member was entitled to receive a final separation payment in the amount of \$1,166.82, which was applied to the SEB recoupment, reducing the SEB overpayment to \$3,028.74. The record further shows that although the member was discharged on August 10, 2006, she erroneously received mid-month active duty pay on August 15, 2006, in the amount of \$1,246.98, thus increasing her indebtedness to \$4,275.72.

In the appeal decision, DOHA's adjudicator overruled DFAS's initial determination to the extent that the adjudicator waived the portion of the indebtedness relating to the erroneous August 15, 2006, payment of pay and allowances that the member received after her discharge. That portion of the debt is not in issue here. However, DOHA's adjudicator sustained DFAS's initial determination concerning the denial of waiver relief on the indebtedness related to the recoupment of the *pro rata* portion of the SEB. The adjudicator concluded that the SEB indebtedness can not be considered for waiver because the SEB payments were proper when made. A condition precedent to waiver relief under 10 U.S.C. § 2774 is that the debt must arise from the erroneous payment of pay or allowances. The adjudicator cited authority for the principle that a government claim against a member arising from a properly paid SEB, which later must be recouped because of early separation, is not a claim arising from an erroneous payment which may be considered under 10 U.S.C. § 2774.

The adjudicator also reviewed the member's argument that she was advised that her SEB would not be recouped. The adjudicator found that the member failed to provide clear and convincing documentary evidence that her SEB would not be recouped and cited certain documentation of record indicating that "if applicable" the recoupment was necessary.

Significantly, at the end of the appeal decision, the adjudicator advised the member that she may request reconsideration of the decision, but that DOHA must actually receive her request within 30 days of the date of the decision. The adjudicator provided the specific address to which the member had to send her request, and also provided a fax number to which the member could send a signed copy of her 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 our receipt of the member's fax on September 27, 2007.

In her request for reconsideration, the member cites DOHA Claims Case No. 97012159 (April 10, 1997) for the proposition that enlistment or re-enlistment bonus recoupment may be

waived when a member is consistently but erroneously advised that she does not have to pay back the bonus. The member offers additional elaboration about her discussions with pay officials, and claims that her separation pay was erroneous because the Navy had not collected SEB at that point. Finally, the member raises a legal challenge to any recoupment based on a claimed deficiency in her SEB agreement.

### **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. Her correspondence is silent on her 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 arbitrary, capricious or contrary to law.<sup>1</sup>

### **Conclusion**

The member's request for reconsideration is untimely; accordingly, the August 23, 2007, appeal decision is the final decision of the Department of Defense in this matter. *See* DoD Instruction 1340.23 ¶ E8.10. This decision does not affect the member's right to pursue other remedies to reduce her outstanding indebtedness, if available.

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

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<sup>1</sup>The member incorrectly argued that our decision in DOHA Claims Case No. 97012159 stands for the proposition that SEB recoupment may be waived if she is consistently but erroneously advised that she does not have to pay back the bonus. Importantly, the final separation payment in the cited decision was erroneous because finance officials did not reduce the payment at separation to recoup SRB. In this case, the record shows that the final separation payment due the member was properly reduced to \$0, in partial recoupment of the SEB. The member still owed the balance of the SEB. A few days later the member then received the erroneous mid-month pay that was waived.

Signed: Catherine M. Engstrom

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Catherine M. Engstrom  
Member, Claims Appeals Board