

KEYWORDS: waiver of indebtedness; timeliness of reconsideration request

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: 07111604

DATE: 11/26/2007

DATE: November 26, 2007

_____)
In Re:)
 [REDACTED]) Claims Case No. 07111604
)
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 member of the Coast Guard reserve requests reconsideration of the September 25, 2007, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 07070502. In that decision, DOHA sustained the Coast Guard's initial determination denying waiver relief to the member under 10 U.S.C. § 2774 for an indebtedness he incurred for

overpayment of pay and allowances while on active duty.¹ The member continues to seek a waiver from debt collection.

Background

The record shows that due to non-judicial punishment under Article 15 of the Uniformed Code of Military Justice (10 U.S.C. § 815), the member was reduced in grade from an E-4 to an E-3 effective March 24, 2006. As a result, the Coast Guard determined that the member was no longer entitled to receive basic allowance for housing at the without dependent rate (BAH) or career sea premium pay (CSP). However, due to administrative error, the member continued to receive BAH and CSP through July 31, 2006, causing a total overpayment of \$3,027.33.

In her appeal decision, DOHA's adjudicator considered the appropriateness of waiver relief up to \$2,704. The adjudicator concluded that the member should have questioned his pay after he was reduced because he experienced an increase in pay notwithstanding the grade reduction. In his request for reconsideration, the member challenges the premise for the adjudicator's conclusion, and based on an analysis of the leave and earnings statements, offers an alternative interpretation citing net pay amounts. The member also asserts other claims, *e.g.*, entitlement to CSP while in a terminal leave status, and offers argument based on the BAH rate for an E-3 and E-4 being the same. Some of these claims are relevant to the request for waiver.

In the last part of the appeal decision, the adjudicator specifically stated that under the provisions of Department of Defense (DoD) Instruction 1340.23, ¶ E8.12 (February 14, 2006), hereafter referenced as the Instruction, if the member wished to request reconsideration of the appeal decision, that request must be received in DOHA within 30 days of the date of the appeal decision. An extension of that time was available for good cause shown. To assist in assuring receipt within 30 days, DOHA offered the option of allowing the member to fax a signed copy of his request for reconsideration to a specified fax number, followed by the immediate transmittal of the original request in first class mail. The record here indicates that the member's request for a 30-day extension of time was not received at DOHA until November 15, 2007, 21 days after the 30-day deadline, when DOHA received the faxed request. The substantive request for reconsideration in fax form was not received until November 20, 2007, 26 days after the deadline. The member based his request for extension on the unavailability, until this time, of assistance from his uncle, a retired pay chief from the Coast Guard, who as a civilian was recently traveling under official TDY orders.

Discussion

While the member's request contains arguments that may reasonably question some of the premises in the adjudicator's decision, he cannot ignore regulatory requirements for filing a

¹The Secretary of Defense has authority to consider appeals of non-DoD component initial determinations involving uniformed service waiver requests under 10 U.S.C. § 2774.

request for reconsideration. A request for reconsideration was not received within 30 days of the appeal decision, and the request for extension that we received on the 51st day after the decision, did not demonstrate good cause. In drawing this conclusion, this Board considered the totality of the circumstances: the timeliness of the member's request, the reason provided (unavailability of a personal representative of choice), and the failure to demonstrate, by clear and convincing evidence, facts supporting the reason offered. No request for reconsideration may be accepted after the time provided in the Instruction has expired.

Conclusion

The member's request for reconsideration is untimely; accordingly, the September 25, 2007, appeal decision is the final decision in this matter. *See* Instruction, ¶ E8.10. This decision does not affect the member's right to pursue other remedies, such as the filing of a claim with the Coast Guard for pay or allowances in accordance with DoD Instruction 1340.21.

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