DATE: August 7, 2008

	)	
In Re:	)	
[REDACTED]	)	Claims Case No. 08080601
	)	
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 July 2, 2008, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 08061301. In that decision, DOHA sustained the initial determination of the Defense Finance and Accounting Service (DFAS) denying waiver of an indebtedness incurred during the member's military service.

Background

The record shows that the Bureau of Naval Personnel advised DFAS that the member submitted a selective reenlistment bonus (SRB) request in 2003. However, instead of reenlisting, he extended his enlistment for 33 months. Due to an administrative error, the member erroneously received SRB payments in the gross amount of $6,360.90. On March 28, 2006, the member was discharged from the Navy. At the time of his discharge, he was entitled to receive a final separation payment in the net amount of $1,727.72. Since the member was indebted to the government in the amount of $6,360.90, the $1,727.72 should have been applied

to the indebtedness. However, on March 30, 2006, the member was paid active duty pay in the amount of $1,485.72, and $242.00 was applied to the overpayment. Therefore, the member became indebted in the amount of $6,118.90 ($6,360.90 - $242.00).

In the appeal decision, the DOHA adjudicator sustained DFAS's initial determination denying waiver of the debt. The adjudicator pointed out that the member received leave and earnings statements (LES) during the period of overpayment, and his LES clearly reflected that he received SRB payments from 2003 through 2005 in the gross amount of $6,360.90. The adjudicator found that collection of the overpayment would not be against equity and good conscience, nor would it be contrary to the best interest of the United States. 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 DOHA's mailing address, 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. On August 6, 2008, our Office received the member's reconsideration request by fax.

In his request for reconsideration, the member states that he mailed his appeal but it was returned for improper postage. Therefore, he faxed his reconsideration request. He also states that he never reenlisted in the military and was unaware of the extra money being paid to him. He states that he is not at fault in the matter and did not know he was being overpaid.

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. *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 the findings in the appeal decision were unreasonable, or that the conclusions drawn were arbitrary, capricious or contrary to law.

Conclusion

The member's request for reconsideration is untimely; accordingly, the July 2, 2008, appeal decision is the final decision of the Department of Defense in this matter. *See* DoD Instruction 1340.23 ¶ E8.10.

Signed: Michael D. Hipple

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Michael D. Hipple
Chairman, Claims Appeals Board

Signed: William S. Fields

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William S. Fields
Member, Claims Appeals Board

Signed: Catherine M. Engstrom

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Catherine M. Engstrom
Member, Claims Appeals Board