



DOHA's adjudicators disallowed the member's claim because he failed to claim a specific dollar amount and identify any basis to justify paying him additional amounts for pay and allowances, travel, transportation or retired pay. The brief period of the member's service, and his discharge from the AUS rather than a transfer to its retired list, caused them to question any eligibility for retired pay. Citing Department of Defense Instruction 1340.21 (Instruction), enclosure 5, ¶ E5.7, DOHA's adjudicators explained that the burden of proving a claim rests with the claimant. Examining the "dragnet" nature of the member's claim, *i.e.*, a claim that asks for anything that may possibly be due to him, DOHA's adjudicators concluded that the member had not met his burden of proof under ¶ E5.7 of the Instruction.

DOHA's adjudicators also found that even if the member had a valid claim, payment would be prohibited under the "Barring Act." This act was created by the Act of October 9, 1940, chapter 788, 54 Stat. 1061 (currently codified at 31 U.S.C. § 3702(b)). The adjudicators explained the history of the Barring Act and considered the effect of the Soldiers and Sailors Civil Relief Act in extending the time that the member had to file any claim. They concluded that the last date on which the member could have filed a claim for the types of entitlements claimed was on April 30, 1959, ten years after his discharge from the AUS.

Finally, DOHA's adjudicators advised the member that he may request reconsideration of their decision, but under ¶ E7.13 of the Instruction, DOHA had to receive such a request within 30 days of the date of the decision (December 29, 2008). The decision also stated that this deadline may be extended for up to an additional 30 days for good cause shown, and that no request for reconsideration may be accepted after this time has expired. A fax number was provided to the member to assist him in meeting the deadline.

DOHA received the member's request for reconsideration, dated and postmarked January 21, 2009, on February 11, 2009, after the 30-day time limit had expired. The member stated that he received DOHA's decision on January 19, 2009, and indicated that he knew that he may have difficulty meeting the 30-day deadline if he requested reconsideration using only ordinary mail. Also, the member did not provide any justification or support for his claim, but did state that his delay in filing the claim was due to "our lack of intelligent information as to the period within which to submit [it] and the difficulty in securing the needed information."

### **Discussion**

The Board has no authority to reconsider the December 29, 2008, decision. Under ¶ E7.13<sup>1</sup> of the Instruction, DOHA had to receive the claimant's request for reconsideration within 30 days of the December 29, 2008, decision (absent good cause shown for an extension). The request for reconsideration should have been received at DOHA no later than January 28,

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<sup>1</sup>This provision is also codified at 32 C.F.R. Part 282, Appendix E, subparagraph (m).

2009. That did not occur. Knowing that he may not meet the 30-day deadline by using ordinary mail, the member should have explained why he was not able to meet the deadline by using the fax number provided or other means to assure delivery of his request for reconsideration to DOHA within the time limit specified in the decision.<sup>2</sup>

### **Conclusion**

In accordance with ¶ E7.11<sup>3</sup> of the Instruction, the December 29, 2008, decision is the final decision of the Department of Defense in this matter.

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

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<sup>2</sup> Even if we had authority to consider this matter, and even if the Secretary of the Army had recommended waiver of the Barring Act under 31 U.S.C. § 3702(e), for the reasons discussed in the decision, it does not appear that the member would have been able to properly support his claim.

<sup>3</sup>This provision is also codified at 32 C.F.R. Part 282, Appendix E, subparagraph (k).