

No. 08101001. In that decision, DOHA's adjudicator affirmed the initial determination of the Coast Guard to deny the member's request that the government waive collection of an overpayment of basic allowance for housing (BAH) in the amount of \$4,246.40.

Background

The record shows that in August 2007, the member received permanent change of station (PCS) orders transferring him from Virginia to Texas. He reported to the new station in Texas in October 2007. While he was stationed in Virginia, the member had submitted an application to continue to receive BAH on behalf of his dependents who resided at a location in a third state at the rate authorized for their location, and that application had been approved. However, upon PCS, the member was no longer entitled to receive BAH at the rate authorized in the location in the third state. Due to administrative error, however, the member erroneously continued to receive BAH at the rate authorized for the location in the third state between October 15, 2007, and May 31, 2008.

In the appeal decision, DOHA's adjudicator denied waiver because the member knew that he was receiving more than what he was entitled to receive. The adjudicator also advised the member that if he wished to ask for reconsideration, his request had to be received at DOHA within 30 days of the date of the appeal decision. The adjudicator also stated that if he needed additional time to prepare his reconsideration request, DOHA may extend that period for up to an additional 30 days for good cause shown. The adjudicator also provided a fax number to help assure timely receipt of any reconsideration request or request for an extension of time. DOHA did not receive the member's request for reconsideration until June 19, 2009, a point in time well beyond 60 days after the appeal decision. The member's reconsideration request explains that he was in the process of moving when he received the appeal decision, but offers no detailed justification for the failure to timely request reconsideration or an extension of time.

In his submission to the Coast Guard and in his reconsideration request to this Board, the member points out that he brought the error to the attention of the yeoman responsible for his pay. In his reconsideration request, he further argues that after he pointed out the error to the named yeoman, she insisted that the BAH was correct, but he continued to discuss the issue with her over a period of four months. Finally, the matter was elevated to a superior, and the error was corrected. He argues that if the yeoman had acted sooner, he would not have incurred such a large debt.

Discussion

We do not have authority to reconsider the appeal decision. The member applied for waiver under 10 U.S.C. § 2774, which is implemented by Department of Defense Instruction 1340.23 (February 14, 2006), referred to hereafter as the Instruction. The DOHA must receive a request for reconsideration within 30 days of the date of the appeal decision. The DOHA may

extend this period for up to an additional 30 days for good cause shown. However, no request for reconsideration may be accepted after this time has expired. *See* Instruction, ¶ E8.12. DOHA received the member's request for reconsideration more than 120 days after the issuance of the appeal decision.

Even if DOHA had timely received the member's reconsideration request, waiver would not have been appropriate in these circumstances. Notwithstanding the yeoman's belief and advice that the BAH was correct, the member knew that he was not entitled to BAH at the rate received. In such circumstances, he had a duty to notify an appropriate official (which he apparently did) and set aside the erroneous portion of the BAH for eventual repayment to the government. *See* Instruction, ¶ E4.1.4. *See also* DOHA Claims Case No. 02111801 (December 2, 2002).

Conclusion

The request for reconsideration is untimely, and in accordance with the Instruction, ¶ E8.10, the February 11, 2009, appeal decision is the final administrative action in this matter.

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

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Member, Claims Appeals Board