

KEYWORDS: carrier/contractor claim; timeliness of request for reconsideration of appeal decision

DIGEST: Under the provisions of Department of Defense Instruction 1340.23, the Defense Office of Hearings and Appeals generally must receive a request for reconsideration of an appeal decision within 30 days of the date of issuance of the decision. This period may be extended for up to an additional 30 days if good cause is shown.

DATE: 1/21/2009

CASENO: 09011501

DATE: January 21, 2009

In Re:)	
Old Dominion Freight Line, Inc.)	Claims Case No.09011501
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 request for reconsideration of an appeal decision within 30 days of the date of issuance of the decision. This period may be extended for up to an additional 30 days if good cause is shown.

DECISION

Old Dominion Freight Line, Inc. (Old Dominion) requests an extension of time until February 11, 2009, to file its request for reconsideration of the December 11, 2008, Appeal Decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 08110303. In the decision, DOHA’s adjudicators affirmed the initial decision of the Defense

Finance and Accounting Service (DFAS) that the government had established a *prima facie* case of liability against Old Dominion for \$50,000 in transit damage to helicopter engine control parts.

The Appeal Decision advised Old Dominion that it had the right to request a reconsideration of the decision, but that DOHA had to receive such a request within 30 days of the date of the Appeal Decision. DOHA also advised Old Dominion that the thirty-day deadline may be extended for up to an additional 30 days for good cause shown, if the request for extension of time is actually received within the original 30 days. Old Dominion emailed its

request for an extension on the evening of January 14, 2009, and DOHA received it on January 15, 2009.

In support of its request for an extension of time, Old Dominion explained that there were “two long weekends” during the initial thirty-day period: “one on December 23rd thru December 28 and one on December 31, 2008 thru Jan. 9, 2009.” Old Dominion also explains that “[m]any of the top operating officials were on Holiday leave and the Manager of cargo claims is having health issues.”

Discussion

Under Department of Defense Instruction 1340.21 (Instruction), ¶ E7.13 (May 12, 2004), 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.¹ No request for reconsideration may be accepted after this time has expired. The request for reconsideration had to be sent to a specified address, which was also noted in the Appeal Decision.

DOHA did not receive a request for reconsideration within 30 days of the date of the Appeal Decision. The record also indicates that DOHA did not receive the request for an extension of time until the 35th day after the decision. More significantly, the request for an extension of time does not contain sufficient information from which we can reasonably conclude that Old Dominion has shown good cause for an additional 30 days to present its reconsideration request.

Superficially, the period between December 31, 2008, and January 9, 2009, is not a “long weekend” even if New Year’s Day and the three days that followed it reasonably could have been so recognized for business purposes. The week of January 5-9, 2009, was a normal work week. Apart from the question of whether a vacation is a good cause to extend time, the fact that many of a company’s top operating officials are unavailable during a certain period does not prove that

¹By our estimate, the 60th day after the Appeal Decision is February 9, 2009, not February 11, 2009.

any official(s) needed to actually work on the reconsideration request was unavailable. The fact that the cargo manager has health issues does not indicate that he was absent in such a way that significantly adversely impacted Old Dominion's ability to present a reasonable reconsideration request within the time period allowed. Finally, the request does not offer proof of any additional facts that likely would be developed within the additional 30 days that, if proven and accepted by the Board notwithstanding their delayed presentation,² would demonstrate Old Dominion's claim.

Conclusion

Any request for reconsideration would now be untimely; accordingly, the December 11, 2008, Appeal Decision is the final decision of the Department of Defense in this matter. *See* Instruction ¶ E7.11.

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

²Generally, all relevant evidence to prove a claim should be presented when the claim is first submitted. Absent compelling circumstances, it will not be considered at later stages of the administrative process. *See* Instruction ¶ E5.7.