

KEYWORDS: waiver of indebtedness; timeliness of request for reconsideration

DIGEST: Under DoD Instruction 1340.23, ¶ E8.12 (February 14, 2006), 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, but no request for reconsideration may be accepted after this time has expired. A request for reconsideration must be sent to the DOHA at the address in ¶ E8.5 of the Instruction.

CASENO: 2010-WV-081001.2

DATE: 10/27/2010

DATE: October 27, 2010

In Re:)	
REDACTED)	Claims Case No. 2010-WV-081001.2
Claimant)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Under DoD Instruction 1340.23, ¶ E8.12 (February 14, 2006), 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, but no request for reconsideration may be accepted after this time has expired. A request for reconsideration must be sent to the DOHA at the address in ¶ E8.5 of the Instruction.

DECISION

A former employee of the Air Force seeks reconsideration of the August 11, 2010, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2010-WV-081001. In that decision, DOHA sustained the initial determination of the Defense Finance and Accounting Service (DFAS) in denying the employee's request for waiver of an indebtedness she incurred (\$1,358.40) when she was overpaid during her last pay period of Federal service. DOHA's adjudicator considered, among other arguments, the employee's plea

that she is financially unable to repay the debt, but concluded that waiver under title 5, United States Code, Section 5584 (5 U.S.C. § 5584), was not available for reasons of financial hardship. On reconsideration, the employee argues that prior DOHA precedential decisions did not address applicants in her circumstances, namely, an unemployed, full-time student living in poverty and depending on student loans and other financial aid. She urges an original evaluation on the application of waiver in these circumstances. The employee sent her reconsideration request through DFAS, and we received it on October 25, 2010, about 75 days after the appeal decision.

Discussion

Under 5 U.S.C. § 5584, we may waive a claim by the government for the erroneous payment of pay or allowances to an employee, but our authority in this regard is regulated by DoD Instruction 1340.23 (Instruction) (February 14, 2006). Among other things, ¶ E8.12 of the Instruction provides that “DOHA must receive a request for reconsideration within 30 days of the appeal decision,” and while that period can be extended “for up to an additional 30 days for good cause shown . . . [n]o request for reconsideration may be accepted after this time has expired. A request . . . must be sent to . . . the address in section E8.5” This deadline was carefully explained in the appeal decision, and the specific address was provided for the filing of a reconsideration request. The employee did not comply with these directions and her request is significantly untimely. Further, even if the employee had requested reconsideration in a timely manner, the Instruction, which contains the Standards for Waiver Determinations in Enclosure 4, specifically excludes any type of financial hardship as a factor for consideration in determining whether a waiver is appropriate. *See* Instruction, ¶ E4.1.7.

Conclusion

The employee’s request for reconsideration is untimely. In accordance with ¶ E8.10 of the Instruction, the August 11, 2010, appeal decision is the final decision of the Department of Defense on the member’s waiver request. DFAS should apply any credit that could offset the \$1,358.40 indebtedness, and may consider, in its discretion, any appropriate repayment plan.

Signed: Michael D. Hipple

Michael D. Hipple
Chairman, Claims Appeals Board

Signed: Jean E. Smallin

Jean E. Smallin
Member, Claims Appeals Board

Signed: Natalie Lewis Bley

Natalie Lewis Bley
Member, Claims Appeals Board