

DATE: February 2, 2022

In Re:)

[REDACTED])

) Claims Case No. 2020-CL-122801.2

Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

The burden of proving the existence of a valid claim against the United States is on the person asserting the claim. The claim must also be filed within the time limit specified by law.

DECISION

The claimant, the surviving spouse of a deceased member of the U.S. Air Force, requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2020-CL-0122801, dated June 23, 2021.

Background

The member and the claimant were married in 2005, and later had a child. On May 1, 2007, the member enlisted in the U.S. Air Force Reserve. He reported on his DD Form 1966, *Record of Military Processing – Armed Forces of the United States*, that he had no dependents. The member received orders directing him to report for active duty from April 16, 2009, through April 27, 2009. The member executed those orders as directed. On August 16, 2009, the member died at his home. The next day the medical examiner certified the cause of death as suicide. On August 17, 2010, the Department of Veterans Affairs (VA) ruled “Service connection for cause of death is granted.”

In 2019 the claimant discovered a copy of the member’s reserve order for his active duty in April 2009, which prompted her to inquire about payment of a death gratuity. She then submitted the DD Form 397, *Claim Certification and Voucher for Death Gratuity Payment*, and the Defense Finance and Accounting Service (DFAS) reports receiving it on January 15, 2020.

On March 18, 2020, the VA sent a letter to the Air Force Personnel Center, Casualty Services Branch. In that letter, the VA stated that the member's death resulted "from a disease or injury incurred or aggravated while on active duty or active duty for training or from an injury incurred or aggravated while on inactive duty training." However, the VA further stated that a decision on the service-connected death had previously been made on August 17, 2010. The VA enclosed a copy of that rating decision.

DFAS denied the claim for the death gratuity on the basis that it was not submitted within six years of the date the claim accrued. DFAS determined that the claim accrued on August 17, 2010, when the VA ruled the member's death was service-connected. Since the claim for the death gratuity had not been received within six years of that date, DFAS barred the claim under the six-year statute of limitations set forth under 31 U.S.C. § 3702(b), popularly known as the Barring Act.

The claimant appealed DFAS's application of the Barring Act to her claim for the death gratuity. She maintained that her claim was timely because she was unable to prove her claim until the Government acknowledged and fixed its liability. She asserted the claim did not accrue until March 18, 2020, when the VA sent their letter to the Air Force Personnel Center, Casualty Services Branch.

In the DOHA appeal decision, the adjudicator sustained DFAS's denial of the claim based on the application of the Barring Act. He explained that under 10 U.S.C. 1476(a), the Secretary concerned shall pay a death gratuity to a member's survivors if the member dies within 120 days after discharge or release from active duty or inactive-duty training, but only if the VA determines that the death resulted from injury or disease incurred or aggravated during the active duty or inactive-duty training. The adjudicator found that on August 17, 2010, the VA issued its determination as required by 10 U.S.C. § 1476(a)(2) for payment of the death gratuity. He also explained that although DOHA could not allow the claim under statute and applicable regulations, the claimant may find other relief through two legal avenues: (1) the Barring Act may be waived under the provisions of 31 U.S.C. § 3702(e); and (2) pursuant to 10 U.S.C. § 1552, the Secretary of a military department may correct any military record of the Secretary's department when the Secretary considers it necessary to correct an error or remove an injustice.

In September 2021 the claimant retained an attorney and requested a 30-day extension to file her reconsideration of the DOHA appeal decision. DOHA granted the extension and gave her until October 7, 2021, to file her request for reconsideration, including the rationale for why reversal of the appeal decision is warranted. DOHA received no additional information or documentation from the claimant or her attorney concerning the reconsideration request.

Discussion

Claims against the government may be allowed only for expenses authorized by statute or regulation. Therefore, DOHA must render decisions based on applicable statutes, regulations and our prior administrative decisions.

We uphold the appeal decision, sustaining DFAS's application of the Barring Act to the death gratuity claim. All liability against the Government was fixed on August 17, 2010, when the VA made its ruling. Therefore, since the claimant did not file her claim for the death gratuity until January 2020, her claim is time-barred under 31 U.S.C. § 3702(b).

As explained by the adjudicator in the appeal decision, the claimant may request waiver of the Barring Act under 31 U.S.C. § 3702(e), through the Assistant Secretary of the Air Force. Under 31 U.S.C. § 3702(e), waiver shall only be granted to allow payment up to a maximum of \$25,000.00. In addition, the claimant may wish to pursue another available remedy. Information on petitioning the Air Force Board for Correction of Military Records (AFBCMR) can be found online at <http://www.afpc.af.mil/Board-for-Correction-of-Military-Records/>. If the claimant wishes to pursue this remedy, she should submit a DD Form 149, *Application for Correction of Military Record*, which can be downloaded at <https://afbrba-portal.cce.af.mil/#board-info/bcmr/navbar>.

Conclusion

The claimant's request for reconsideration is denied and we uphold the DOHA appeal decision dated June 23, 2021. In accordance with the Department of Defense Instruction 1340.21 ¶ E7.15.2, this is the final administrative action of the Department of Defense in this matter.

SIGNED: Catherine M. Engstrom

Catherine M. Engstrom
Chairman, Claims Appeals Board

SIGNED: Richard C. Ourand, Jr

Richard C. Ourand, Jr
Member, Claims Appeals Board

SIGNED: Jennifer I. Goldstein

Jennifer I. Goldstein
Member, Claims Appeals Board