



DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
POST OFFICE BOX 3656
ARLINGTON, VIRGINIA 22203-1995



DATE: March 27, 2025

In Re:)	
)	
[REDACTED])	Claims Case No. 2023-CL-101010.4
)	
Claimant)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Under the Barring Act, 31 U.S.C. § 3702(b), jurisdiction to consider claims is limited to those that are filed within six years after they accrue. However, under 31 U.S.C. § 3702(e), upon request of the Secretary concerned, the Secretary of Defense may waive the time limits established by the Barring Act for claims involving a uniformed service member's pay, allowances, retired pay or survivor benefits, to allow payment of the claim up to \$25,000.00.

DECISION

A retired member of the U.S. Air Force, now deceased, through his brother (now the claimant), requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2023-CL-101010.3, dated July 17, 2024.

Background

The member completed and signed a DD Form 2656, *Data for Payment of Retired Personnel*, on June 30, 1994. On that form, the member designated that his arrears of retired pay (AOP) due upon his death be paid by law, *i.e.*, by order of precedence set forth under 10 U.S.C. § 2771. He also noted that he was not married and had no dependent children. On October 1, 1994, the member retired from the Air Force, and began receiving monthly retired pay. In 2007, the member suffered a catastrophic stroke which left him fully disabled and wheelchair bound. At that time, the member's father became his conservator. On November 8, 2007, the member began living as a disabled veteran in a state veterans' home. After the member's father's death, his brother became his conservator. The member received his monthly retired pay until March 1, 2015, when the Defense Finance and Accounting Service (DFAS) suspended payment of his retired pay. The record reflects that DFAS suspended payment of his retired pay after receiving

from the U.S. Postal Service on January 24, 2015, the mailed copy of the member's December 2014 Retiree Account Statement (RAS) and his 2014 1099-R, with a postal mark reading "Returned to Sender, Deceased, Unable to Forward." However, the member was not deceased and due to his medical issue, was still living as a disabled veteran in the veterans' home.

On May 15, 2023, the member's brother wrote to his U.S. Senator requesting assistance with a debt on the member's Department of Veterans' Affairs (VA) account. On May 16, 2023, the VA sent DFAS a letter on the member's behalf requesting that the member's brother be appointed as his legal representative. Effective May 16, 2023, DFAS restored the member's retired pay account and on June 16, 2023, made the member's brother his legal representative of record on his retired pay account. On June 27, 2023, DFAS wrote to the member's brother notifying him that the member's account had been moved from a non-pay to a pay active status effective March 1, 2015. DFAS stated that DFAS would pay the member \$119,085.85, in retroactive retired pay for the period May 17, 2017, through May 31, 2023. However, DFAS stated that DFAS was prevented from issuing \$36,238.03 in retroactive retired pay for the period May 1, 2015, through May 16, 2017, due to the application of the Barring Act, 31 U.S.C. § 3702(b). DFAS gave the member the right to seek waiver of the Barring Act through the Assistant Secretary of the service concerned, or the Assistant Secretary of the Air Force (Financial Management and Comptroller), to allow payment of the claim up to the statutory maximum of \$25,000.00. DFAS also gave the member the right to appeal the denial of payment of the \$36,283.03, to DOHA. On July 21, 2023, DFAS received an appeal from the member's brother on his behalf for the barred portion of funds. In the appeal, the member stated that DFAS has acknowledged that due diligence was not taken by DFAS to confirm the member's death before DFAS cut off his retired pay. The member served in the U.S. Air Force faithfully and dutifully for 20 years, as well as other members of his family. DFAS acknowledged that the member's case was not handled properly. The member stated that there had been a total lack of communication by DFAS with his family. The member stated that he should not be penalized for DFAS's errors. The member requested that he be paid the \$36,238.03, and also requested the status of the money the VA found he owed in the overpayment of benefits.

On October 6, 2023, DFAS prepared an administrative report upholding the denial of the claim due to the application of the Barring Act and forwarded it to the member's brother for his review and rebuttal. On October 10, 2023, DOHA received the member's appeal package from DFAS. However, on October 12, 2023, DOHA remanded the case file to DFAS, notifying the member, because DFAS had not provided 30 days from the date of the DFAS administrative report for the member to submit a rebuttal. On November 20, 2023, DFAS returned the case file to DOHA and requested that DOHA resume the adjudication of the case since the period of rebuttal had concluded. On November 30, 2023, DOHA again remanded the case file to DFAS, requesting further information to properly adjudicate the case file. On May 6, 2024, DFAS resubmitted the member's appeal package to DOHA, and provided DOHA with the requested documentation. On June 20, 2024, the member's brother informed both DOHA and DFAS that the member passed away. DFAS advised DOHA that the member's brother is his AOP beneficiary under 10 U.S.C. § 2771, and the barred funds in the amount of \$36,238.03 would be payable as AOP, but for DFAS's application of the Barring Act.

In the appeal decision, the DOHA attorney examiner upheld DFAS's application of the Barring Act to the AOP claim for the period March 1, 2015, through May 16, 2017. The attorney examiner explained that under 31 U.S.C. § 3702(b), referred to as the Barring Act, the administrative statute of limitations, jurisdiction to consider claims is limited to those that are filed within 6 years after they accrue. The attorney examiner explained that based on the record, the member's claim for retired pay after DFAS suspended its payment was not made until May 16, 2023, when DFAS received information from the VA that the member was still alive. The attorney examiner explained that the member's brother, the claimant, now his AOP beneficiary, could seek waiver of the Barring Act through the Assistant Secretary of the Air Force to receive payment of up to \$25,000.00.

In the request for reconsideration, through his attorney, the claimant states that DFAS has acknowledged that they were in error by not following their own rules resulting in the erroneous suspension of the member's retired pay. He also states that the six-year time limit, when the claim accrued for retired pay, was incorrectly set as March 1, 2015. He states that this date is incorrect because the member was already in receipt of his retired pay and the statute of limitations should never have been applied to bar payment. He states that it was only by government error that the member's retired pay was suspended in 2015. In the alternative, he requests waiver of the Barring Act in order to receive payment of the barred funds.

Discussion

Claims against the government may be allowed only for expenses authorized by statute or regulation. When the language of a statute is clear on its face, the plain meaning of the statute will be given effect, and that plain meaning cannot be altered or extended by administrative action. Therefore, DOHA must render decisions based on applicable statutes, regulations, and our prior administrative decisions.

Subsection 3702(a) of title 31, United States Code, provides that except as otherwise provided by law the Secretary of Defense shall settle all claims set forth under 31 U.S.C. § 3702(a)(1)(A) and (1)(B). Specifically, under 31 U.S.C. § 3702(a)(1)(A), DOHA settles claims involving uniformed service members' pay, allowances, travel, transportation, payments for unused accrued leave, retired pay, and survivor benefits. The implementing regulation for DOHA's authority is set forth in Department of Defense Instruction 1340.21 (May 12, 2004).

Claims settlement under 31 U.S.C. § 3702 is subject to a statute of limitations. Under 31 U.S.C. § 3702(b), jurisdiction to consider claims is limited to those that are filed within six years after they accrue. In pertinent part, section (b)(1) states the following:

A claim against the Government presented under this section must contain the signature and address of the claimant or an authorized representative. The claim must be received by the official responsible under subsection (a) for settling the claim or by the agency that conducts the activity from which the claim arises within 6 years after the claim accrues . . .

Unless otherwise provided by law, appropriated funds are not legally available to pay claims on which the applicable limitation has run. Absent statutory authority, agencies may not waive or extend the time allowed by the Barring Act. *See* DOHA Claims Case No. 2019-CL-012401.2 (November 26, 2019).

In this case, on October 1, 1994, the member retired from the Air Force and began receiving retired pay. The member received his monthly retired pay until March 1, 2015, when DFAS erroneously suspended payment. On May 16, 2023, DFAS received notification from the VA that the member's brother was his legal representative. DFAS then restored payment of the member's retired pay, including retroactive payment of the member's retired pay for six years prior to May 16, 2023. Pursuant to the Barring Act, DFAS properly did not go back more than six years in paying the member retired pay retroactively. *See* DOHA Claims Case No. 2016-CL-101801.2 (May 30, 2017); and B-255963, June 14, 1994.

In addition, since the member has now passed away, the payment of the member's retroactive retired pay that is barred by the statute of limitation is payable to the member's brother, his AOP beneficiary, under 10 U.S.C. § 2771. However, the Barring Act still applies to the underlying claim for the unpaid retroactive retired pay (payable as AOP). As explained by DFAS and the DOHA attorney examiner, 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), upon request of the Assistant Secretary of the Air Force, the Secretary of Defense may waive the time limits established by 31 U.S.C. § 3702(b) for claims arising under 31 U.S.C. § 3702(a)(1)(A). Under 1340.21 (May 12, 2004) ¶ E6.4, DOHA is delegated the authority to grant or deny the request on behalf of the Secretary of Defense. Requests for waiver should be submitted to the Assistant Secretary of the Air Force at the following address:

Assistant Secretary of the Air Force
(Financial Management & Comptroller)
SAF/FMF, Rm 5D739
1130 Air Force Pentagon
Washington, DC 20330-1130

Under DOHA's Barring Act waiver authority as set forth in 31 U.S.C. § 3702(e), waiver shall only be granted to allow payment up to a maximum of \$25,000.00. Therefore, the claimant may wish to also pursue the matter with the Air Force Board for Correction of Military Records (AFBCMR). The claimant's request for waiver of the Barring Act does not forfeit the right to seek redress from the AFBCMR. Under 10 U.S.C. § 1552, the Secretary of a military department, acting through a correction board, may correct a member's record when the Secretary considers it necessary to correct an error or remove an injustice. Information on petitioning the AFBCMR can be found online at <https://afrba-portal.cce.af.mil/#all-board-info/afbcmr>.

Conclusion

For the reasons stated above, the claimant's request for reconsideration is denied, and we affirm the appeal decision dated July 17, 2024.

Catherine M. Engstrom
Catherine M. Engstrom
Administrative Judge
Chair, Claims Appeals Board

Michelle P. Tilford
Michelle P. Tilford
Administrative Judge
Member, Claims Appeals Board

David F. Hayes
David F. Hayes
Administrative Judge
Member, Claims Appeals Board