



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



DATE: April 17, 2025

In Re:

[REDACTED]

Claimant

)
)
) Claims Case No. 2024-CL-091301.3
)
)

**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.

DECISION

The claimant, the widow of a deceased member of the U.S. Army National Guard, requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2024-CL-091301.2, dated January 21, 2025.

Background

On May 17, 2012, the member died while on active duty. The record shows that between September 17, 2012, and June 10, 2013, the Defense Finance and Accounting Service (DFAS) certified three checks for the claimant, to cover 365 days of basic allowance for housing (BAH-365), unpaid pay and allowances (UPPA), and back-BAH. DFAS reports they sent these checks to the claimant at the address on file. On December 13, 2023, DFAS mistakenly sent to the claimant a condolence letter regarding the member's death. The claimant contacted the Ft. Drum Casualty Assistance Office for assistance and asserted that this was when she learned about the three checks. The claimant stated she never received the checks but presented no evidence to support her claim. In January 2024, the claimant submitted an SF-1174 to DFAS. She also requested replacement checks for each of those DFAS sent to her.

DFAS denied the claimant's claim, finding that her claim was barred by the six-year statute of limitations found at 31 U.S.C. § 3702, also known as the Barring Act. DFAS explained that she needed to have filed her claim within six years of the member's death. They

explained they could not reissue the checks because the underlying claims were time-barred. DFAS told the claimant that she could go to the Assistant Secretary of the Army to request waiver of the Barring Act, up to \$25,000.00. The claimant appealed DFAS' denial, stating that she timely submitted an SF-1174, *Claim for Unpaid Compensation of Deceased Member of the Uniformed Services*, to the Ft. Drum Casualty Assistance Office shortly after the member's death, which is why she believes DFAS sent the checks to her in the first place. DFAS upheld their denial of the claim, again on the basis that it was time-barred under 31 U.S.C. § 3702. DFAS noted that claimant made no mention of having submitted a claim at the time of the member's death until she appealed the denial of her claim, and that she provided no evidence that she had timely filed.

In the appeal decision, the DOHA attorney examiner upheld DFAS's denial of the claim. The attorney examiner explained that the underlying obligation liquidated by a treasury check is subject to the Barring Act, and that a new check can be negotiated only if the underlying claim is valid, to include not being time-barred. The attorney examiner stated that the issue for consideration at DOHA was whether the underlying obligation on the Treasury checks is valid. The attorney examiner noted that DFAS' records reflect the checks were sent to the claimant's address and that while DFAS does not have proof the checks were negotiated, there is no evidence they were returned to DFAS. In addition, DFAS confirmed that none of the checks hit limited payability,¹ nor did DFAS stop payment on any of the three checks, which they would have done if they had been returned because they hit limited payability. The attorney examiner found that the claimant provided no documentation the checks were never deposited.

In the claimant's request for reconsideration, she stated that the recent denial had been based upon an impossible time-frame and assumption that Casualty Assistance had made the surviving spouse aware of the specific benefits she was to get. The claimant states that none of the relevant entities; Casualty Assistance, DOHA, or DFAS; has provided proof that she was told the specific benefits she was to receive so that she would be looking for the payments in the mail. She stated further that one cannot expect a person to make a claim for benefits of which they were unaware. The claimant stated that DOHA told her the three letters and checks were sent via certified mail and she asked for proof that DFAS sent the letter and checks in that manner. She also asked for copies of her signature as proof she received them. The claimant stated she spoke with an individual at DFAS who confirmed the checks were never cashed, but that afterwards she was unable to contact him.

Discussion

The burden of proving the existence of a valid claim against the United States is on the person asserting the claim. The claimant must prove their claim by clear and convincing evidence on the written record that the United States Department of Defense is liable for the claim. See DoD Instruction 1340.21 (May 12, 2004) ¶ E5.7. Federal agencies and officials must act within the authority granted to them by statute in issuing regulations. Thus, the liability of

¹ Per Treasury.gov, "limited payability" cancellation occurs when a check is cancelled by the U.S. Department of the Treasury because it has been outstanding for one year. The cancellation happens automatically and in the 14th month of a check after it has been outstanding for one year.

the United States is limited to that provided by law (including implementing regulations). *See* DOHA Claims Case No. 2021-CL-041302.2 (August 3, 2021)

As explained by the attorney examiner in the appeal decision, the underlying obligations that were liquidated by the Treasury check were subject to the Barring Act - the six-year statute of limitations found in 31 U.S.C. § 3702(b). 31 U.S.C. § 3702(c) states that the reissuance of a Treasury check may only be negotiated within one year of issuance of the check. The attorney examiner noted that the issue before DOHA was whether the underlying obligations for which the three checks were issued were valid. The attorney examiner found that DFAS' records reflect that all three checks were certified and mailed to the claimant's address, with no evidence they were not cashed. The claimant provided no proof the checks were not received or negotiated. The attorney examiner also noted that the Assistant Secretary of the Army (Financial Management and Comptroller) cannot act upon a request to waive the Barring Act unless the underlying validity of the claim is established, which in this case, it has not.

Conclusion

The claimant's request for reconsideration is denied, and we affirm the appeal decision in DOHA Claim No. 2024-CL-010206, disallowing the claim. In accordance with DoD Instruction 1340.21 ¶ E7.15.2, this is the final administrative action of the Department of Defense in this matter.

Charles C. Hale
Charles C. Hale
Administrative Judge
Acting 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