

KEYWORDS: claim for equalization pay

DIGEST: The burden of proving the existence of a valid claim against the United States is on the person asserting the claim.

CASENO: 2010-CL-012502.2

DATE: 5/10/2012

DATE: May 10, 2012

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In Re: )  
          [REDACTED] ) Claims Case No. 2010-CL-012502.2  
                                  )  
Claimant )

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**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**

A son of a former member of the Philippine Commonwealth Army requests reconsideration of the January 27, 2010, decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2010-CL-012502. In the decision, a DOHA adjudicator determined that our Office had no authority to consider the claim for equalization pay incident to the former member's service during the Second World War.

**Discussion**

The burden of proving the existence of a valid claim against the United States is on the person asserting the claim. *See* DOHA Claims Case No. 2008-CL-061904.2 (June 30, 2010) and DOHA Claims Case No. 08112402 (November 26, 2008). A claimant must prove by clear and convincing evidence on the written record that the United States Department of Defense is liable under the law for the amount claimed. *See* DoD Instruction 1340.21 (Instruction) ¶ E5.7 (May 12, 2004).

In DOHA Claim No. 2010-CL-012502, the adjudicator directed the claimant to Public Law 111-5, title X, section 1002, 123 Stat. 115, 200, February 17, 2009, which authorizes payment of a one-time lump sum to certain Filipino veterans of the Second World War. However, the adjudicator explained that claims for those payments are being adjudicated by the U.S. Department of Veterans Affairs (VA), and directed the claimant to the proper address and deadline for filing his claim.

In his reconsideration request, the claimant states that he filed the claim with the VA. However, the VA denied his claim on the basis that children of deceased veterans are not eligible to apply for equalization pay. As properly explained by the adjudicator, our Office has no authority under law to consider a claim for equalization pay. The authority rests with the VA. As such, any right to appeal or the review the VA's denial would properly rest with the VA, not this Office.<sup>1</sup>

### **Conclusion**

The claimant's relief is denied, and we affirm the January 27, 2010, decision. In accordance with DoD Instruction 1340.21 ¶ E7.15.2, this is the final administrative action of the Department of Defense in this matter.

Signed: Jean E. Smallin

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Jean E. Smallin  
Chairman, Claims Appeals Board

Signed: Catherine M. Engstrom

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<sup>1</sup>We note that the deadline for receipt by the VA of an equalization pay claim was February 16, 2010. In addition, the Public Law authorizing the VA to pay equalization pay to eligible persons, defines eligible persons as the actual members of the Philippine Commonwealth Army or guerrilla organization serving before July 1, 1946, under commanders appointed, designated or subsequently recognized by the United States. The law further states that if an eligible person who has filed a claim for equalization pay dies before payment is made, the payment shall be made to the surviving spouse, if any, of the eligible person.

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Catherine M. Engstrom  
Member, Claims Appeals Board

Signed: Natalie Lewis Bley

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Natalie Lewis Bley  
Member, Claims Appeals Board