

KEYWORDS: service member claim

DIGEST: The burden of proving the existence of a valid claim against the United States is on the person asserting the claim. Under 31 U.S.C. § 3702(b), a claim must be submitted within six years of accrual. If it is not submitted within six years, the claim is barred, and this Office does not have jurisdiction to consider it.

CASENO: 2011-CL-030904.5

DATE: 5/30/2012

DATE: May 30, 2012

In Re:	)	
[REDACTED]	)	Claims Case No. 2011-CL-030904.5
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. Under 31 U.S.C. § 3702(b), a claim must be submitted within six years of accrual. If it is not submitted within six years, the claim is barred, and this Office does not have jurisdiction to consider it.

**DECISION**

A former member of the U.S. Army requests reconsideration of the May 1, 2012, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2011-CL-030904.4. In the decision, a DOHA adjudicator determined that our Office had no authority to consider the claim because it was filed more than six years after it accrued.

**Background**

On March 4, 2011, the Secretary of the Army requested that the Secretary of Defense waive the time limit for receipt of claims under 31 U.S.C. § 3702(b), and allow the member's claim of \$3,575.00 for recovery of allotments taken from his pay in various amounts for deposit to financial institutions during the period January 1981 through October 1984.<sup>1</sup> By memorandum dated April 25, 2011, the Director of the DOHA responded to the Secretary of the Army, and returned the matter to their office for appropriate staffing and case development. Specifically, the Director wrote that the situation and issues concerning the member's claim were not unique and undoubtedly had been considered in previous cases by the Defense Finance and Accounting Service (DFAS). The Director stated that because DFAS was the agency charged with administering military pay, DFAS's position regarding the member's claim had to be considered. However, the record did not indicate that the member's claim had been reviewed by DFAS. The Director also pointed out that the burden of proving a claim ultimately rests with the claimant.

Subsequently, DFAS found that the Barring Act, 31 U.S.C. § 3702(b), applied to the member's claim. DFAS also reviewed the member's claim and the information provided by the member, considered documents that could be found, and consulted with representatives of the financial institution in question. DFAS stated that leave and earnings statements showed a total of \$3,575.00 of the member's military pay had been sent to the financial institution in question in allotments of \$175.00 per month during the period January 1981 through September 1981, and in amounts varying from \$50.00 to \$250.00 per month during the period May 1983 through October 1984. DFAS concluded that it could not verify that the member did not receive the allotments at issue, that the receiving institution's records had been purged because of the passage of time, and that the member had not provided sufficient information to meet a claimant's burden of proof. Because DFAS could not establish an amount owed to the member by the Government, DFAS denied the member's claim.

On January 5, 2012, the Secretary of the Army issued a memorandum concurring with DFAS's denial of the member's claim and stated that the Army would not pursue further waiver action on behalf of the member.

The DOHA adjudicator agreed with DFAS and denied the member's claim. He also

---

<sup>1</sup>Under 31 U.S.C. 3702(e), upon request of the Secretary concerned (in this case, the Secretary of the Army), the Secretary of Defense may waive the time limits established by 31 U.S.C. 3702(b) for claims involving a uniformed service member's pay, allowances or survivor benefits, as long as the claim does not exceed \$25,000.00. Under Department of Defense Instruction 1340.21 ¶ E6.4 (May 12, 2004), the Director of the Defense Office of Hearings and Appeals (DOHA) is delegated the authority to grant or deny the request on behalf of the Secretary of Defense.

found that the member's claim for pay allotments accrued sometime from January 1981 through October 1984, and his claim for them was not received in the Army until sometime after September 16, 2010, and sometime before October 18, 2010. The DOHA adjudicator determined that since the member's claim was received some 26 to 29 years after it had accrued and 20 to 23 years after the statute of limitations had expired, it was barred from consideration under statute. He also examined two exceptions to application of the Barring Act's six-year rule. He first explained that the Barring Act does not apply to funds held in trust by the Government. He explained that on several occasions Congress has created savings programs under which military members can elect to have portions of their pay deposited in the United States Treasury. Such deposits are held in trust by the Treasury in individual savings accounts for members. However, the adjudicator found no evidence in the record to show that the allotments of the member's pay had been deposited in the Treasury since the member's allotment requests designated that the funds should go to financial institutions. He then explained that the other exception to the six-year limitation is waiver under 31 U.S.C. § 3702(e). Department of Defense Instruction 1340.21 sets forth the procedure for waiver. DFAS must have found that the member's claim has merit but for the passage of time, the Secretary of the Army must have agreed with DFAS and requested waiver of the Barring Act, and the request must ultimately have been approved by the Director of DOHA acting on behalf of the Secretary of Defense. The requirements of the Instruction have not been met.

In his reconsideration request, the member contends that the allotments were sent to a Savings Account and attaches his DA Forms 1341, *JUMPS-Army Allotment Authorization*. He continues to claim that he is owed the money.

### **Discussion**

The Barring Act, 31 U.S.C. § 3702(b), provides that every claim involving members' pay and allowances must be received by the Secretary of Defense within 6 years from the date it first accrued or be forever barred. The Comptroller General held that the Barring Act does not apply to funds deposited in Soldiers' Deposit Savings Accounts, because those specific funds are not held by the Government on its own account but merely as trustee for others. *See* 66 Comp. Gen. 40 (1986); 42 Comp. Gen. 622 (1963); and B-139963, Jul. 6, 1959. The Comptroller General determined that these types of accounts were statutorily established. Such claims are for amounts due from the United States to which a proper claimant is entitled, the amount due the claimant being already fixed and determined and held in the Treasury as funds for the claimant, not as appropriated funds of the government. *See* 42 Comp. Gen. at 623, *supra*. As correctly explained in the appeal decision, the member's claim for recovery of allotments taken from his pay by the Government and sent to the member's financial institution does not come under the exception to the Barring Act just explained. The member's claim here is contingent on an adjudication of the eligibility of the member to receive it and a determination as to the amount payable. In this case, the member is required to establish his right to receive payment. If such right is established, the amount due is for payment from funds appropriated, not from trust funds, but from funds appropriated by the Congress for the payment of members of the Armed Forces.

Further, the burden of proving the existence of a valid claim against the United States is on the person asserting the claim. *See* DoD Instruction 1340.21 ¶ E5.7. Notwithstanding that burden, since such proof often can be found in Government records, upon presentation of a claim, attempts are made to secure these records in order to insure to the maximum extent possible that such entitlement as a claimant may have is protected. Where records necessary to establish or refute a claim are unavailable, due to the passage of time, and the claimant, in turn, has failed to provide proof of entitlement, we have no alternative but to disallow the claim. *See* 66 Comp. Gen. 40, *supra*.

Under these regulations and prior decisions, the member has the burden of proving that he did not receive the allotments from the financial institution in question. He has presented as his evidence the DA Forms 1341. As explained by DFAS and the DOHA adjudicator, we cannot determine on the basis of these documents that the member did not receive this money. Accordingly, the member has not met his burden of proving the validity of his claim. Therefore, his claim must be denied.

### **Conclusion**

The claimant's relief is denied, and we affirm the May 1, 2012, appeal 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

---

Jean E. Smallin  
Chairman, Claims Appeals Board

Signed: Catherine M. Engstrom

---

Catherine M. Engstrom  
Member, Claims Appeals Board

Signed: Natalie Lewis Bley

---

Natalie Lewis Bley  
Member, Claims Appeals Board