

DATE: January 20, 2012

In Re:)
 [REDACTED]) Claims Case No. 2011-CL-100714.2
)
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.

DECISION

The widow of a former veteran of the Philippine Army during World War II, requests reconsideration of an October 21, 2011, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2011-CL-100714. In that decision, this Office denied the widow any compensation and old age pension owed to her husband from the United States for his services in the Philippine Army.

The DOHA adjudicator determined that the claimant failed to state and prove a claim on account of her late husband's service in the Philippine Army as a Private First Class from 1944 (or 1945) into 1946; in an unstated rank in the United States Army from April 6, 1946, to March 14, 1949; and apparently as a Second Lieutenant in the Philippine Constabulary during an unstated period. This claim would be cognizable by the Secretary of Defense under 31 U.S.C. § 3702, or other statutes, and Department of Defense Instruction (hereinafter Instruction) 1340.21 (May 12, 2004).

The adjudicator examined the possible types of items payable incident to the death of an active or retired member of the uniformed services of the United States: (1) arrears of pay; (2) the death gratuity; and (3) the Survivor Benefit Program. The adjudicator determined that the record did not indicate that the claimant was receiving retired pay based on his service in the United States Army at the time of his death, or that he was due any unpaid amount at the time of his death. The adjudicator determined that even if the claimant had a valid claim, payment

would be prohibited under the “Barring Act,” 37 U.S.C. § 3702(b).¹ Any arrears of pay for his time in the Philippine Army or Constabulary would not be a cognizable claim payable by this Office. Since the individual’s service in the U.S. Army ended in 1949 and his death occurred in 1985, his death has not been connected to that service. Therefore, no death gratuity is payable. Finally, there is no evidence in the record that the claimant elected an annuity for survivor’s benefits.

A representative of the widow has requested reconsideration. Essentially, the request is based on the fact that the widow is elderly and does not have enough income for her daily needs. The representative also requests that our Office refer to the provisions of mustering-out pay.

Discussion

The claimant must prove, by clear and convincing evidence, on the written record, that the United States is liable to her for an amount claimed. All relevant evidence to prove the claim should be presented when a claim is first submitted. In the absence of compelling circumstances, evidence that is presented at later stages of the administrative process will not be considered. Instruction ¶ E5.7. In this instance, however, even if this Office were to examine the record for mustering-out pay, it would be also be prohibited under the “Barring Act,” 37 U.S.C. § 3702(b).

Finally, the adjudicator advised the claimant that she may request reconsideration of the decision, but under ¶ E7.13 of the Instruction, DOHA had to receive such a request within 30 days of the date of the decision (October 21, 2011). The decision also stated that this deadline may be extended for up to an additional thirty days for good cause shown, and no request for reconsideration may be accepted after this time had expired. A fax number was provided to the claimant to assist in meeting the deadline.²

Conclusion

The claimant’s request for relief is denied, and the October 21, 2011, appeal decision is the final administrative action of the Department of Defense in this matter. *See* ¶ E7.11 of the Instruction.

Signed: Jean E. Smallin

Jean E. Smallin
Chairman, Claims Appeals Board

¹ Any claim for pay for his service in the U.S. Army would be barred by the six-year statute of limitations established by 37 U.S.C. § 3702(b)(1), popularly known as the Barring Act.

² DOHA received the request for reconsideration on January 12, 2012, with no request for additional time or good cause shown.

Signed: Catherine M. Engstrom

Catherine M. Engstrom
Member, Claims Appeals Board

Signed: Natalie Lewis Bley

Natalie Lewis Bley
Member, Claims Appeals Board