

KEYWORDS: military pay claim

DIGEST: The burden of proving the existence of a valid claim against the United States is on the person asserting the claim. The claim must also be filed within the time limit specified by law.

CASENO: 2011-CL-100712.3

DATE: 5/17/2012

DATE: May 17, 2012

In Re:)
 [REDACTED]) Claims Case No. 2011-CL-100712.3
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. The claim must also be filed within the time limit specified by law.

DECISION

The widow of a former member of the Philippine Army requests reconsideration of the March 13, 2012, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2011-CL-100712.2. In that decision, this Office denied the widow's claims for arrears of pay, retired pay and a Survivor Benefit Plan (SBP) annuity incident to her late husband's service during the Second World War.

Discussion

In the appeal decision, the DOHA adjudicator determined that the claimant failed to state and prove a claim incident to her late husband's service in the Philippine Scouts, a component of the United States Army, from July 17, 1946, to May 27, 1949. He also explained that even if she had a valid claim, payment would be prohibited under the "Barring Act," 37 U.S.C. 3702(b).¹

A representative of the widow has requested reconsideration. The representative requests that our Office refer to the provisions of mustering-out pay.

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. 2011-CL-100714.2 (January 20, 2012) 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. The adjudicator correctly explained why the claimant did not prove her claim for arrears of pay, retired pay, or SBP annuity. He also explained the application of the "Barring Act," 37 U.S.C. § 3702(b). *See* DoD Instruction 1340.21 (Instruction) ¶ E5.7 (May 12, 2004). Moreover, 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. *See* Instruction ¶ E5.7. In this instance, even if this Office were to examine the record for mustering-out pay, it would be also prohibited under the "Barring Act," 37 U.S.C. § 3702(b).

Finally, the adjudicator advised the claimant that she may request reconsideration of the appeal decision, but under ¶ E7.13 of the Instruction, DOHA had to receive such a request within 30 days of the date of the decision, March 13, 2012. The adjudicator also advised the claimant 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

¹Any claim for pay for her husband's 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."

²DOHA received the request for reconsideration on May 4, 2012, with no request for additional time or good cause shown.

The claimant's request for relief is denied, and we affirm the March 13, 2012, appeal decision. In accordance with DoD Instruction 1340.21 ¶ E7, 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