

KEYWORDS: SBP 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: 2012-CL-030101.2

DATE: 7/19/2012

DATE: July 19, 2012

In Re:)
 [REDACTED]) Claims Case No. 2012-CL-030101.2
)
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. The claim must also be filed within the time limit specified by law.

DECISION

The widow¹ of a former member of the Philippine Army during World War II requests reconsideration of the March 16, 2012, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2012-CL-030101. In that decision, this Office denied the widow's claims for an old age pension and a Survivor Benefit Plan (SBP) annuity incident to her husband's service in the Philippine Army.

¹In the appeal decision, the DOHA adjudicator examined the claim based on the assumption that the claimant was who she purported to be, the widow of a former member of the Philippine Army.

Background

In the appeal decision, the DOHA adjudicator determined that the claimant failed to state and prove a claim incident to her husband's service in the Philippine Army. The record reflects that the member was discharged on April 1, 1947.² He also explained that even if she had a valid claim, payment would be prohibited under the "Barring Act," 31 U.S.C. 3702(b).³

A representative of the claimant 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 claims. He also explained the application of the "Barring Act," 31 U.S.C. § 3702(b). *See* DoD Instruction 1340.21 (Instruction) ¶ E5.7 (May 12, 2004). The adjudicator specifically explained that a claim for a pension based on old age is not among the types of claims cognizable under 31 U.S.C. § 3702(a)(1). In regard to her claim for an SBP annuity, the adjudicator explained that even if it were not time-barred, her claim would still not be allowed because her husband could not have participated in SBP. He died in 1964. Therefore, he could not have participated in SBP because it was enacted in 1972.⁴

As for the new claim for mustering-out pay she raises in her reconsideration request, 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 also be prohibited under

²The record reflects that the member was born on August 15, 1917. He enlisted in a recognized guerilla group, the 113th Infantry Regiment, Philippine Army, which came under the command of the United States.

³Any 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 31 U.S.C. § 3702(b)(1), popularly known as the "Barring Act."

⁴The adjudicator further explained that there was no evidence that the member participated in any other SBP-like programs such as the Uniformed Services Contingency Option Act (USCOA), and the Retired Serviceman's Family Protection Plan (RSFPP), because they were enacted in 1953 and 1961, respectively.

the “Barring Act,” 31 U.S.C. § 3702(b). Since the member was discharged from military service on April 1, 1947, any claim that he had for mustering-out pay accrued on that date. The claim for mustering-out pay was not received here until July 16, 2012, more than 65 years after the date of his discharge. Thus, consideration of the claim for mustering-out pay is prohibited, and there is no further action this Office may take on such a claim. *See* B-171422, Jan. 4, 1971, and B-168909, Feb. 16, 1970.

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 16, 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.⁵

Conclusion

The claimant’s request for relief is denied, and we affirm the March 27, 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: Gregg A. Cervi

Gregg A. Cervi
Member, Claims Appeals Board

⁵DOHA received the request for reconsideration on July 16, 2012, with no request for additional time or good cause shown.