

DATE: February 27, 2007

In Re:

[REDACTED]

Claimant

)

Claims Case No. 07022101

CLAIMS APPEALS BOARD

RECONSIDERATION DECISION

DIGEST

1. The burden of proving the existence of a valid claim against the United States is on the person asserting the claim. Where records necessary to establish or refute a claim are unavailable, and the claimant, in turn, has failed to provide proof of entitlement, we have no alternative but to disallow the claim.
2. Under the provisions of Department of Defense Directive 1340.21, the Defense Office of Hearings and Appeals generally must receive a claimant's request for reconsideration of an appeal decision within 30 days of the appeal decision.

DECISION

The daughter of a deceased service member requests reconsideration of the January 12, 2007, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 06102001, in which DOHA denied her claim for payment of a death gratuity payable incident to her father's death in World War II.

Background

The record shows that the daughter of a World War II service member claims the death gratuity that was payable incident to her father's death. The member was killed in action in the Philippines in 1943. Following cessation of hostilities in 1945, the member's father submitted a claim for arrears of pay. There is no indication that he also claimed a death gratuity, nor is there any record as to the disposition of the father's claim. In June 1961, another family member claimed arrears of pay, and the claim was denied. There is no indication whether that family member claimed a death gratuity. Later, the claimant filed for a share of her father's arrears of pay and the death gratuity, and in an undated letter (circa 1968) the General Accounting Office⁽¹⁾ (GAO) approved payment of 1/6 of the unpaid pay and allowances (\$1,789.28) to the claimant and to each of her siblings or his/her assigns. However, payment of the death gratuity was withheld pending information from the Department of the Army on whether it had been paid.

In 2001, the claimant re-instituted her claim for the death gratuity. Although she initially filed it with GAO, the matter was transferred to the Department of Defense (DoD). DoD had succeeded the Comptroller General as the agency with authority to decide such claims.⁽²⁾ On April 19, 2001, the Defense Finance and Accounting Service (DFAS) advised the claimant that her claim for arrears of pay and for the death gratuity were barred by the six-year statute of limitations under 31 U.S.C. § 3702(b). The claimant was referred to other agencies for claims involving Veterans benefits, Social Security, and insurance. The claimant appealed her claim for the death gratuity to DOHA in September 2006.

In DOHA's January 12, 2007, appeal decision, our adjudicators agreed with the claimant that her claim was not barred by the statute of limitations. However, in reviewing GAO's 1968 action, our Office noted that GAO had advised the

claimant that payment of the death gratuity was contingent upon the record showing that the death gratuity had not already been paid. Our adjudicators found that the claimant had not submitted any documentary evidence in this regard and that applicable regulations require that a claimant prove her claim. ⁽³⁾

Without waiving regulatory requirements, our adjudicators made fresh inquiries on the claimant's behalf to GAO and DFAS, and through DFAS, with the National Archives & Records Administration, National Personnel Records Center (NPRC). On December 29, 2006, our Office received correspondence from NPRC containing a copy of what had survived or was reconstructed of the member's personnel file. The surviving record does not address the death gratuity and does not show that the death gratuity had not been paid. Accordingly, our adjudicators concluded that the claim was too doubtful to pay. Our adjudicators advised claimant that under DoD Instruction 1340.21,

¶ E7.13, ⁽⁴⁾ DOHA may accept a request for reconsideration from her, but that such a request had to be received by DOHA within 30 days from the date of the January 12, 2007, decision. DOHA received the claimant's request for reconsideration on February 21, 2007.

Discussion

The claimant's request for reconsideration is untimely. While the 30-day receipt requirement may be extended an additional 30 days for good cause, the claimant neither demonstrated good cause nor demonstrated that (a) the findings in the appeal decision were unreasonable, or that (b) the conclusions drawn were arbitrary, capricious or contrary to law.

Conclusion

The claimant's request for reconsideration is denied, and we affirm the January 12, 2007, appeal decision in DOHA Claim No. 06102001 disallowing the claim. In accordance with DoD Instruction 1340.21, ¶ E7.15.2 ⁽⁵⁾ this is the final administrative action of the Department of Defense in this matter.

Signed: Michael D. Hipple

Michael D. Hipple

Chairman, Claims Appeals Board

Signed: Jean E. Smallin

Jean E. Smallin

Member, Claims Appeals Board

Signed: William S. Fields

William S. Fields

Member, Claims Appeals Board

1. The agency is now referred to as the Government Accountability Office.
2. General Accounting Office Act of 1996, Pub. L. No. 104-316, § 202(n)(1), 110 Stat. 3826, 3843-3844 (1996).

3. DoD Instruction 1340.21 ¶ E5.7. *See also* Comptroller General decision 66 Comp. Gen. 40 (1986). The burden of proving the existence of a valid claim against the United States is on the person asserting the claim. 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. *See* Comptroller General decision B-216359, Mar. 5, 1985. Where records necessary to establish or refute a claim are unavailable, and the claimant, in turn, has failed to provide proof of entitlement, we have no alternative but to disallow the claim. *See* Comptroller General decision , B-214533, July 23, 1984.

4. This provision is also codified at 32 C.F.R. Part 282, Appendix E, subparagraph (m).

5. This provision is also codified at 32 C.F.R. Part 282, Appendix E, subparagraph (o)(2).