

KEYWORDS: Claim-timely reconsideration; Claim-burden of proof

DIGEST: 1. 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.

2. The burden of proving the existence of a valid claim against the United States is on the person asserting the claim.

CASENO: 07071704

DATE: 7/23/2007

DATE: July 23, 2007

In Re: [REDACTED] Claimant)))))	Claims Case No.07071704
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**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGESTS

1. 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.

2. The burden of proving the existence of a valid claim against the United States is on the person asserting the claim.

DECISION

The son of a deceased service member, as the authorized representative of his estate, requests reconsideration of the June 5, 2007, appeal decision of the Defense Office of Hearings

and Appeals (DOHA) in DOHA Claim No. 07052409, in which DOHA denied his claim for payment of “special benefits pay” and “equalization pay” incident to his late father’s service in the Philippines during World War II.

Background

The record shows that the service member entered service with the Philippine Army on October 15, 1941 and separated from the Philippine Army at some later date. The member died on February 11, 2003. By letter dated April 4, 2007, to the Government Accountability Office (GAO), the representative claimed “special benefits pay” on behalf of his late father. Because GAO no longer has jurisdiction to settle such claims, GAO forwarded the claim to our Office for disposition. DOHA’s adjudicators were not familiar with the term “special benefits pay” and construed the representative’s claim as a claim for “equalization pay.” In the appeal decision, the adjudicators explained that since the end of World War II, legislation has been introduced from time to time in the United States Congress to authorize retroactive equal pay for Philippine veterans of the war. This is commonly referred to as “equalization pay.” However, despite the widespread belief in the Philippines that such legislation had been enacted, no legislation for equalization pay has ever been enacted into law.¹ Accordingly, our adjudicators disallowed the claim. Our adjudicators also advised the representative that under DoD Instruction 1340.21, ¶ E7.13,² DOHA may accept a request for reconsideration from him, but that such a request had to be received by DOHA within 30 days from the date of the June 5, 2007, decision. DOHA received the claimant’s request for reconsideration on July 17, 2007.

In his request for reconsideration, the representative cited Public Law 106-169³ as the basis for his claim for “special benefits pay.” The representative also requested an additional payment for “equalization pay.” Neither request sought a specific amount or basis for calculation of that amount, and the request for “equalization pay” did not specify the legal basis for that payment.

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 representative neither demonstrated good cause nor demonstrated that the deceased service member (and the representative through him) was entitled by law to the benefits claimed. The adjudicators

¹Our research identified a web site of the Philippine Veterans Affairs Office which contained the following comment on the subject: “4. Equalization of wartime pay for Commonwealth Army and recognized Guerilla Veterans at par with rates of pay given to officers and enlisted men of the United States Armed Forces is not sanctioned by the U.S. Government.” <http://server.pvao.mil.ph/faq.html> as of July 19, 2007.

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

³Pub. L. No. 106-169, § 251, 113 Stat. 1822, 1844-1856 (1999), amending the Social Security Act.

properly explained that there is no basis for a claim against the United States for “equalization pay.” Further, the “special benefits pay” claim is predicated on an entitlement available to persons who are eligible for supplemental security income under title XVI of the Social Security Act and meet other requirements. However, the Department of Defense has no authority to determine eligibility for this benefit; jurisdiction is within the authority of the Social Security Administration. The representative failed to prove his claim as required by DoD Instruction 1340.21, ¶E5.7: clear and convincing evidence on the written record that the United States is liable for the amount claimed with all relevant evidence presented when the claim is first submitted.⁴

Conclusion

The claimant’s request for reconsideration is denied, and we affirm the June 5, 2007, appeal decision in DOHA Claim No. 07052409 disallowing the claim. In accordance with DoD Instruction 1340.21, ¶ E7.15.2⁵ 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

⁴ This provision is also codified at 32 C.F.R. Part 282, Appendix C, paragraph (g).

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