

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

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: 07072006

DATE: 7/25/2007

DATE: July 25, 2007

In Re:)	
[REDACTED])	
)	Claims Case No.07072006
)	
Claimant)	

**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 widow of a former member of the Philippine Army requests reconsideration of the June 7, 2007, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 07052408. In that decision, DOHA disallowed the wife's claim for the "equalization pay" she claims is owed by the United States to her husband from his World War II service.

Background

The record shows that the member entered service with the Philippine Army on December 12, 1941. He was separated on August 17, 1946. His widow states that the member died on August 30, 2005, and includes a copy of the member's death certificate. In her undated letter to the Government Accountability Office (GAO), the widow claimed "equalization pay" on behalf of her late husband. Because GAO no longer has jurisdiction to settle such claims, GAO forwarded the claim to our Office for disposition. The widow claims \$20,000, and she cites Public Law 79-301, Public Law 79-391, and the "Equity Act of 1995" "which is being sponsored by" two named senators and two named representatives.¹ In the appeal decision, DOHA's 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.² Accordingly, our adjudicators disallowed the claim. Our adjudicators also advised the widow that under DoD Instruction 1340.21, ¶ E7.13,³ 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 June 7, 2007, decision. DOHA received the claimant's request for reconsideration on July 20, 2007.

The widow requests reconsideration based upon the fact that her late husband fought side

¹Public Law 79-301 contained the following language: "Service before July 1, 1946, in the organized military forces of the government of the Commonwealth of the Philippines while such forces were in the service of the Armed Forces of the United States . . . shall not be deemed to have been active military, naval, or air service for the purposes of any law of the United States conferring rights, privileges, or benefits . . ." This provision is now codified for purposes of veterans benefits in 38 U.S.C. § 107. The "Filipino Veterans Equity Act of 1995," which nominally would have affected veterans benefits under title 38 of the United States Code, was introduced in the 104th Congress by Senator Inouye in January 1995 as S. 55. Congress did not enact it into law.

²Our 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.

³This provision is also codified at 32 C.F.R. Part 282, Appendix E, subparagraph (m).

by side with the American soldier in defense of freedom and democracy.

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 widow neither demonstrated good cause nor demonstrated that the deceased service member (and the widow through him) was entitled by law to the benefits claimed. The adjudicators properly explained that there is no basis for a claim against the United States for "equalization pay." The widow failed to prove her claim as required by DoD Instruction 1340.21, ¶E5.7: clear and convincing evidence on the written record that the United States Department of Defense (not the Department of Veterans' Affairs or some other agency) is liable under the law 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 7, 2007, appeal decision in DOHA Claim No. 07052408 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).