

KEYWORDS: Claim-burden of proof

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

CASENO: 07080201

DATE: 8/6/2007

DATE: August 6, 2007

In Re: [REDACTED]  Claimant	) ) ) ) )	Claims Case No.07080201
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**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.

**DECISION**

In DOHA Claims Case No. 07022101, February 27, 2007, this Board found that the claimant did not file a timely request for reconsideration of the Defense Office of Hearings and Appeals (DOHA) January 12, 2007, appeal decision in Claim No. 06102001. That claim involved a death gratuity based on the death of claimant’s father in the Philippines in World War II. In the appeal decision, DOHA had concluded, for the reasons stated therein, that the claim for the death gratuity was too doubtful even after conducting fresh inquiry.

On April 11, 2007, the claimant again wrote to the Government Accountability Office (GAO) claiming entitlement to her father’s pension, allowances, insurance, social security

benefits, Veterans compensation “and other compensation or death benefits due to heirs from the United States Government.” GAO transferred this matter to DOHA for the same reason that it transferred the death gratuity in the earlier claim. *See* footnote 2 of the February 27, 2007, appeal decision. DOHA considered this new claim in the June 11, 2007, appeal decision under DOHA Claim No. 07052406. In that decision, DOHA refused to entertain claims for insurance and those benefits administered by the United States Department of Veterans Affairs or the United States Social Security Administration because this Office has no authority to decide such claims. The appeal decision provided the addresses to which the claimant could address any claim she may have in these areas. The appeal decision considered and rejected any claim for military retired pay because the member was killed in action without being transferred to the retired list. Finally, the decision noted that DOHA or GAO had previously considered any claims for arrears of pay and the death gratuity, disposing of those matters as indicated in prior decisions, and concluded that the demand for “other compensation or death benefits” as it relates to the Department of Defense was too vague to adjudicate.

The Board construes the claimant’s request for reconsideration to be that DOHA arbitrarily and capriciously dismissed her claims for “other compensation and death benefits” involving other agencies and DoD because the discussion in the appeal decision “is an implied admission on your part” that other potential benefits exist. The claimant suggests that it is well known that “heirs to veterans, enjoy benefits from the U.S. Government such as educational pay for the children and grandchildren . . . and access to the U.S. Embassy for visa status.”

### **Discussion**

Our adjudicators advised claimant that under DoD Instruction 1340.21, ¶ E7.13,<sup>1</sup> 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 by fax on July 28, 2007. Although the reconsideration request is not timely, we believe that the claimant has demonstrated good cause for the delay.

As the appeal decision indicates, we have no authority to decide claims involving the Office of Servicemen’s Group Life Insurance, the Department of Veterans Affairs, the Social Security Administration, or other U.S. government agencies. Regarding the claims cognizable by our Office, the claimant was reimbursed for arrears of pay many years ago by our predecessor, GAO, and a possible death gratuity was already decided against the claimant as indicated above. The claimant’s attempt to preserve her rights by using the term “other compensation and death benefits” fails to meet the regulatory requirements of DoD Instruction 1340.21, ¶ E5.7: clear and convincing evidence on the written record that the United States Department of Defense is liable under the law for the amount claimed with all relevant evidence presented when the claim is first

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<sup>1</sup>This provision is also codified at 32 C.F.R. Part 282, Appendix E, subparagraph (m).

submitted.<sup>2</sup> The claimant has not indicated what other specific benefits administered by DoD she claims and the amount of the claim.

### **Conclusion**

The claimant's request for reconsideration is denied, and we affirm the June 11, 2007, appeal decision in DOHA Claim No. 07052406 disallowing the claim. In accordance with DoD Instruction 1340.21, ¶ E7.15.2<sup>3</sup> this is the final administrative action of the Department of Defense in this matter.

Signed: Michael D. Hipple

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Michael D. Hipple  
Chairman, Claims Appeals Board

Signed: Jean E. Smallin

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Jean E. Smallin  
Member, Claims Appeals Board

Signed: William S. Fields

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William S. Fields  
Member, Claims Appeals Board

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<sup>2</sup> This provision is also codified at 32 C.F.R. Part 282, Appendix C, paragraph (g).

<sup>3</sup>This provision is also codified at 32 C.F.R. Part 282, Appendix E, subparagraph (o)(2).