

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: 07081501

DATE: 8/21/2007

DATE: August 21, 2007

In Re:)
 [REDACTED])
) Claims Case No. 07081501
)
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.

DECISION

The widow of a former member of the Philippine Army requests reconsideration of the July 16, 2007, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 07061811. In that decision, DOHA disallowed the widow's claim, on behalf of her late husband, for the "equalization pay" she claims is owed by the United States to her husband for his World War II service.

Background

The record shows that the member enlisted in the Philippine Army (PA) on December 2, 1941, and was assigned to the 21st Field Artillery Regiment, 21st Philippine Division of the PA, and served in the rank of Private. The PA came under the command of the United States Army Forces in the Far East (USAFFE), which included all Philippine and United States ground and land-based aviation forces in the Philippines at the time of the Japanese invasion in December 1941. The last United States and Philippine forces surrendered on May 6, 1942. That was followed by the 71-mile Bataan Death March of Philippine and American prisoners of war to Camp O'Donnell, Capas, Tarlac, The Philippines. The member died there on May 31, 1942. His death certificate was issued December 22, 1950, by the Philippines Veterans Board, Department of National Defense, Republic of the Philippines.

The widow claimed “equalization pay” in a letter dated May 19, 2007, to the Government Accountability Office (GAO). Due to the transfer of the military pay claim function,¹ GAO forwarded the widow’s claim to our Office. Our adjudicators disallowed the claim because there is no legal authority to retroactively pay veterans of the PA the same rate of pay as was paid to members of the United States Army at that time. 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

In seeking our reconsideration, the widow states that she has no source of income and is totally disabled and cannot perform any kind of work.

Discussion

DOHA’s adjudicators properly explained that there is no legal authority to pay her claim against the United States for “equalization pay.” The widow failed to prove her claim as required in 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 submitted.³

¹See the Memorandum to the Heads of Departments, Agencies, and Others Concerned by the Acting Comptroller General in B-275605, Mar. 17, 1997, for an explanation of the functions transferred and the relevant legal authorities involved.

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.

³ This provision is also codified at 32 C.F.R. Part 282, Appendix C, paragraph (g).

Conclusion

The claimant's request for reconsideration is denied, and we affirm the July 16, 2007, appeal decision in DOHA Claim No. 07061811 disallowing the claim. In accordance with DoD Instruction 1340.21, ¶ E7.15.2⁴ 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

⁴This provision is also codified at 32 C.F.R. Part 282, Appendix E, subparagraph (o)(2).