

KEYWORDS: claim; Equalization Pay

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

CASENO: 07101601

DATE: 10/24/2007

DATE: October 24, 2007

_____)
In Re:)
 [REDACTED]) Claims Case No. 07101601
)
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 Scouts (member) requests reconsideration of the September 24, 2007, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 07090419. In the appeal decision, DOHA's adjudicators disallowed the widow's claim on behalf of her deceased husband for "Equalization Pay" for his service after World War II.

Background

The record shows that the member married the claimant on June 5, 1944. On July 12, 1946, the member enlisted in the Philippine Scouts and served in the rank of Private. He was discharged on November 22, 1948. By letter dated December 6, 1965, to the General Accounting Office (now Government Accountability Office or GAO), the member claimed equalization pay. The GAO stamped the member's letter as received in the GAO Claims Division on December 13, 1965, but the file does not indicate the disposition of the member's claim. The member died in the Philippines on January 3, 1985. By letter to GAO dated July 2, 2007, the claimant claimed unpaid equalization pay as the widow of the member. The authority to consider a claim for uniformed service pay and allowances was transferred to the Secretary of Defense in 1996,¹ and GAO forwarded this claim to us by letter dated August 23, 2007.

In the appeal decision, DOHA's adjudicators disallowed the claim because they had no authority to pay it under the law. The adjudicators explained that since the end of World War II, legislation had 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 known as "Equalization Pay." There is widespread belief in the Philippines that legislation providing for it has been enacted by the United States Congress and approved by the President of the United States, but no such legislation has been enacted.

In her request for reconsideration, the claimant states that she is old and sick; that no benefit was received relative to her late husband's military service; and that she is in financial need.

Discussion

As unfortunate as the claimant's circumstances may be, we are constrained by the requirements of law. The request for reconsideration does not demonstrate that claimant's late husband was entitled to a specific unpaid pay or allowance as a member of the United States Armed Forces. As DOHA's adjudicators also explained, the liability of the United States is limited to that provided by law and regulation; therefore, absent such authority, there is no legal basis upon which we may authorize payment of the claim. *See* the Comptroller General's decision in B-205223 (February 12, 1982), a copy of which was provided to the claimant.

Conclusion

The claimant's request for reconsideration is denied, and we affirm the September 24, 2007, appeal decision in DOHA Claim No.07090419, disallowing the claim. In accordance with DoD Instruction 1340.21, ¶ E7.15.2² this is the final administrative action of the Department of Defense in this matter.

¹General Accounting Office Act of 1996, Pub. L. No. 104-316, § 202(n), 110 Stat. 3826, 3843-3845 (1996).

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

Signed: Michael D. Hipple

Michael D. Hipple
Chairman, Claims Appeals Board

Signed: Jean E. Smallin

Jean E. Smallin
Member, Claims Appeals Board

Signed: Catherine M. Engstrom

Catherine M. Engstrom
Member, Claims Appeals Board