

KEYWORDS: claim; equalization pay; timeliness

DIGEST: Under Department of Defense Instruction 1340.21 (Instruction), ¶ E7.13, the Defense Office of Hearings and Appeals (DOHA) must receive a request for reconsideration within 30 days of the appeal decision. While DOHA may extend this period for up to 30 additional days for good cause shown, no request for reconsideration may be accepted by DOHA after this time. The Instruction does not provide for a notice of appeal procedure, and such a procedure cannot be used to extend time beyond that provided in the Instruction.

CASENO: 07111501

DATE: 11/29/2007

DATE: November 29, 2007

_____)
In Re:)
[REDACTED]) Claims Case No. 07111501
)
Claimant _____)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Under Department of Defense Instruction 1340.21 (Instruction), ¶ E7.13, the Defense Office of Hearings and Appeals (DOHA) must receive a request for reconsideration within 30 days of the appeal decision. While DOHA may extend this period for up to 30 additional days for good cause shown, no request for reconsideration may be accepted by DOHA after this time. The Instruction does not provide for a notice of appeal procedure, and such a procedure cannot be used to extend time beyond that provided in the Instruction.

DECISION

The claimant, the son of a deceased Filipino veteran who served under the United States Army Forces in the Far East (USAFFE) from 1942 to 1946, files a “Notice of Appeal” on behalf of his father’s heirs. On September 24, 2007, the Defense Office of Hearings and Appeals (DOHA) denied the claim on the basis that legislation authorizing retroactive equal pay for Filipino veterans of World War II (“equalization pay”) has not been enacted into law.

At the conclusion of the appeal decision, DOHA advised the claimant that in accordance with Department of Defense Instruction 1340.21 (Instruction), ¶ E7.13¹ (May 12, 2004), the claimant had 30 days from the date of the decision to request reconsideration, and that we could extend this period up to an additional 30 days for good cause. The decision provided a fax number to assist the claimant with a timely response. On November 19, 2007, DOHA received a fax message purportedly from the claimant, who stated that he was noticing an appeal of the appeal decision. The message indicated that our Office could take action when we receive the claimant’s “pleading.” Currently, we have not received any additional support or “pleading” and more than 60 days has passed since the appeal decision.

A review of the record does not indicate the presence of a power of attorney or other evidence of the son’s authority to act for the other heirs of the veteran. Moreover, while the initial correspondence was unclear, it appears that the claimant is seeking entitlements administered by the Department of Veterans Affairs (VA), as well as possibly any entitlement that may be owed by the United States Army. The claimant’s initial correspondence never mentions “equalization pay,” but could be fairly construed to include it.

Discussion

To the extent that any claim for “equalization pay” or any other claim against the United States Army or the Department of Defense may be involved, we have no authority at this point to consider it. The Instruction does not provide for a notice of appeal, and such a notice cannot be used to extend time to request reconsideration beyond the maximum amount permitted in the Instruction, *i.e.*, 60 days, even if an extension had been granted for good cause. The Instruction specifically states that there is no authority to accept a reconsideration request after this time has expired. *See* Instruction ¶ E7.13.²

DOHA has no authority to consider claims under the authority of the Secretary of Veterans Affairs. Those claims should be addressed to the Department of Veterans Affairs. The

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

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

Department of Veterans Affairs web site indicates that it has an office in Manila.³

Conclusion

This Board has no authority to reconsider the September 24, 2007, appeal decision. In accordance with Instruction ¶ E7.11,⁴ DOHA's September 24, 2007, appeal decision in DOHA Claim No. 07090418 is the final decision 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: Catherine M. Engstrom

Catherine M. Engstrom
Member, Claims Appeals Board

³Veterans Benefits Administration, Manila Regional Office, 1131 Roxas Blvd., Ermita, 0930 Manila, PI 96440. Tel: (011) (632) 528-6300 Fax: (011) (632) 523-1224. This information is current as of November 27, 2007.

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