

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: 07120308

DATE: 12/4/2007

DATE: December 4, 2007

In Re:)	
[REDACTED])	Claims Case No. 07120308
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

A former member of a Philippine guerilla unit and the Philippine Army requests reconsideration of the November 14, 2007, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 07103005. In that decision, DOHA disallowed the member's claim for the "equalization pay" he claims is owed to him by the United States for his World War II service.

Background

The record shows that the member joined or was inducted into the Philippine guerillas on August 1, 1942. He saw action against the Japanese at several locations and was hospitalized from March 16, 1945, to April 11, 1945, after being wounded in an engagement. He was processed into the Philippine Army (PA) on May 29, 1945, and was discharged on January 31, 1946.

The member claimed “equalization pay” in a letter dated September 5, 2007, to the Government Accountability Office (GAO). Due to the transfer of the military pay claims function,¹ GAO forwarded the member’s claim to our Office. Our adjudicators disallowed the claim because there is no legal authority to retroactively pay veterans of the guerillas or 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 member acknowledges that while equalization pay legislation may not have been enacted into law, he reminds us, among other things, that he was wounded in combat and is now in advanced age and deserves the claim he has made.

Discussion

DOHA’s adjudicators properly explained that there is no legal authority to pay his claim against the United States for “equalization pay.” The member failed to prove his 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

Conclusion

The claimant’s request for reconsideration is denied, and we affirm the November 14,

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.” See <http://server.pvao.mil.ph/faq.html> current as of December 4, 2007.

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

2007, appeal decision in DOHA Claim No. 07103005 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: Catherine M. Engstrom

Catherine M. Engstrom
Member, Claims Appeals Board

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