

KEYWORDS: 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: 08012401

DATE: 1/29/2008

DATE: January 29, 2008

In Re:)
) [REDACTED])
)) Claims Case No. 08012401
))
))
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 a Philippine military organization (member) requests reconsideration of the August 7, 2007, determination of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 07080601. In that determination, a DOHA adjudicator disallowed the widow's claim on behalf of her deceased husband for "equalization pay" for his service after World War II. The adjudicator recognized that there is a belief among many Philippine veterans that legislation was enacted into law in the United States that authorizes

retroactive equal pay for Philippine members at the same rate as that authorized for comparable U.S. service members who served in the Philippines around that time.¹ See the Philippine Veterans Affairs Office web site cited below for comparable pay rates during World War II.² The adjudicator explained that there are certain benefits for Philippine veterans living in the United States, but no legislation was enacted into law that allows former members of the Philippine armed forces remaining in the Philippines to retroactively obtain the difference in pay between what they received at the time (if converted at that time to U.S. dollars) and what their counterparts in the American armed forces received. Accordingly, there is no legal authority to allow payment of claims for “equalization pay.”

Our examination of the claim file indicates that the widow provided very little information to support her claim. For example, she does not state an amount she believes her deceased husband was owed; does not indicate the component that his military organization belonged to; does not indicate whether the amount is owed for the entire period of his service (May 13, 1948, to January 18, 1955) or just a part of it; and does not present evidence of his death and her relationship to him through a certified copy of a death certificate. The member’s period of service appears problematic because the Philippines was independent during the period of service.

In her request for reconsideration, the widow argues the equities of paying Philippine members less than their counterparts who were members of the United States Armed Forces.

Discussion

As unfortunate as these circumstances may be, we are constrained by the requirements of the law. We will assume for purposes of this reconsideration that the claimant is the widow of the member and properly succeeded to his property interests. However, the request for reconsideration does not demonstrate that the claimant’s late husband was entitled to a specific amount of pay or allowance as a member of the United States Armed Forces that was not paid to him. See DoD Instruction 1340.21 (Instruction), ¶ E5.7, which requires 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 As DOHA’s adjudicator also explained, the liability of the United States is limited to that provided by law (including an implementing regulation); therefore, absent such authority, there is no legal basis upon which we may authorize payment of this claim.

¹It appears that members of the Philippine armed forces, such as the Commonwealth Army during World War II, were paid in Philippine currency which was a fraction of the value of U.S. currency at that time.

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 January 28, 2008.

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 August 7, 2007, disallowance in DOHA Claim No.07080601. In accordance with the Instruction, ¶ 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).