KEYWORDS: claim; equalization pay

DIGEST: Under Department of Defense Instruction 1340.21, ¶ E.7.13, DOHA must receive a request for reconsideration within 30 days of the appeal decision.

CASENO: 08081202

DATE: 8/14/2008

	DATE: August 14, 2008	
In Re: [REDACTED])) Claims Case No. 08081202	
Claimant)	

CLAIMS APPEALS BOARD RECONSIDERATION DECISION

DIGEST

Under Department of Defense Instruction 1340.21, ¶ E.7.13, DOHA must receive a request for reconsideration within 30 days of the appeal decision.

DECISION

The surviving spouse (claimant) of a former member of the Philippine Scouts requests reconsideration of the July 9, 2008, decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 08061903. In its decision, DOHA disallowed the surviving spouse's claim, on behalf of her late husband, for "the differential and overseas pay" that was due, but never paid to him, under an authority she described as "Act no. 263 88th United States Congress." The surviving spouse further identifies this legislation as the "Equalization of Pay Act." The member served in the Philippine Scouts from January 15, 1946, until December 23, 1948.

In disallowing the claim, DOHA advised the claimant that no legislation had ever passed Congress which provided that the United States would assure Filipino veterans the same pay as American soldiers had received at the time of their service. DOHA also found that the claimant failed to demonstrate that the member had been paid less than he should have been paid.

On August 11, 2008, DOHA received a fax request for reconsideration. The fax message indicates that it was transmitted on the morning of August 11, 2008. The message contained additional information which indicates that the member could have been deployed outside of the Philippines during his service with the Philippine Scouts. However, the claimant does not demonstrate that members of the Philippine Scouts were entitled to pay equal to what American soldiers were receiving at the time, and she does not offer proof of what the member did receive and what he should have received.

Discussion

The Board has no authority to reconsider the July 9, 2008, decision. Under Department of Defense (DoD) Instruction 1340.21, ¶ E7.13,¹ DOHA had to receive the claimant's request for reconsideration within 30 days of the July 9th decision. The request for reconsideration should have been received at DOHA no later than August 8, 2008. That did not occur.

Conclusion

In accordance with DoD Instruction ¶ E7.11,² the July 9, 2008, decision 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

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 (k).

Catherine M. Engstrom Member, Claims Appeals Board