



enlisted in the Philippine Army on December 14, 1941, which came under the command of United States Army Forces - Far East (USAFFE) and included all United States and Philippine ground and ground-based air forces in the Philippines. Apparently, the claimant's father continued to serve in the resistance after the surrender of the Philippines to the Japanese, and on November 5, 1942, he was killed in action. In her initial submission, the claimant did not specify any amount that she sought for the burial expenses of either parent, but only stated that: ". . . he was killed in action, so I'm asking your favor to pay the burial of my father because I need it very badly."

DOHA's adjudicators denied any claim for the father's burial expenses because there is no evidence to demonstrate that the claim was presented to the United States before August 12, 2008. The adjudicators note that under the Act of October 9, 1940, ch. 788, 54 Stat. 1061, claims like this had to be presented to the Comptroller General, with some exceptions, within ten years of accrual. One exception allowed a period of at least five years after the peace is established to present this type of claim, but this claim was still barred because it accrued on November 5, 1942, and the ten year deadline came on November 5, 1952, after the fifth year following the establishment of the peace and without its presentation to the Comptroller General. The Act of October 9, 1940, was later codified in title 31 of the United States Code, Section 71a (31 U.S.C. § 71a), modified to reduce the period of limitations to six years instead of ten, and is now found in 31 U.S.C. § 3702(b).<sup>1</sup>

DOHA's adjudicators denied the claim for burial expenses of her mother because no provision of law authorized it, even assuming that the claimant had authority to represent the now deceased mother.

DOHA's adjudicators advised the claimant that she could seek reconsideration of their decision, but that DOHA actually had to receive her request within 30 days of the decision. The adjudicators provided the claimant a number to fax her request (followed by her forwarding of the original of her request in the mail), if time was an issue for her, and she was informed about the possibility of requesting additional time if needed. The claimant's request for reconsideration was received by DOHA on October 20, 2008.

On reconsideration, the claimant argues that her mother was a person of minimum education and suggests, therefore, that it is not appropriate to apply any statute of limitations against her or the claimant. The claimant now includes copies of two documents on Department of Veterans Affairs letterhead entitled *Agreement on Fund Usage and Needs* purporting to show an agreed monthly allowance for claimant's mother, apparently based on the mother's living expenses in 2006 and 2007, prior to her death.

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<sup>1</sup>31 U.S.C. § 3702(b) now provides that such a claim has to be received by this or another office acting on behalf of the Secretary of Defense, or the agency that conducts the activity from which the claim arose (in this case an agency under the Secretary of the Army as a successor to the Secretary of War), within 6 years after the claim accrued. The provision containing the minimum five year allowance for peace to be established before a claim by a service member would be barred is found in subsection 3702(b)(2).

## Discussion

The Board has no authority to reconsider the September 3, 2008, decision. Under Department of Defense (DoD) Instruction 1340.21, ¶ E7.13,<sup>2</sup> DOHA had to receive the claimant's request for reconsideration within 30 days of the September 3<sup>rd</sup> decision. The request for reconsideration should have been received at DOHA no later than October 3, 2008. That did not occur. This is dispositive of the claimant's request for reconsideration.

Some additional points of information may be useful. First, the statute of limitations in 31 U.S.C. § 3702, and its predecessors, are designed to protect the United States and apply irrespective of the knowledge or educational qualifications of the claimant. Additionally, the Comptroller General's decision in B-134035, Oct. 31, 1957, provides some useful historical information about the President's call up and order to service of the organized military forces of the government of the Commonwealth of the Philippines on July 26, 1941 (*see* 6 F.R. 3825). The Comptroller General concluded that these Philippine forces, like the Commonwealth Army, did not become members of the Army of the United States under that call and order, but continued to serve as Philippine military forces, and their pay and allowances and other benefits were the responsibility of the government of the Philippines. The claim in B-134035 specifically involved reimbursement of burial expenses. Also, the claim as presented here is of questionable propriety because it did not request a specific sum based on actual burial expenses of either parent. Finally, the decision here does not affect any rights or entitlements that may be available to the claimant through the Secretary of Veterans Affairs or other agencies of the United States.

## Conclusion

In accordance with DoD Instruction 1340.21, ¶ E7.11,<sup>3</sup> the September 3, 2008, decision is the final decision of the Department of Defense in this matter.

Signed: Michael D. Hipple

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Michael D. Hipple  
Chairman, Claims Appeals Board

Signed: Jean E. Smallin

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Jean E. Smallin

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

<sup>3</sup>This provision is also codified at 32 C.F.R. Part 282, Appendix E, subparagraph (k).

Member, Claims Appeals Board

Signed: William S. Fields

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William S. Fields  
Member, Claims Appeals Board