

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: 08100901

DATE: 10/15/2008

DATE: October 15, 2008

\_\_\_\_\_)  
In Re: )  
          [REDACTED] ) Claims Case No. 08100901  
                                  )  
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 the Philippine Scouts requests reconsideration of the September 22, 2008, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 08091611. In that decision, DOHA disallowed her claim on behalf of her deceased husband for “equalization pay” and Philippine Scout pay incident to her husband’s service during the Second World War. The claimant does not claim any specific amount of “equalization pay,” but predicates her claim on “H.R. 955 and H.R. 1181, 89<sup>th</sup> Congress,

sometime on Nov. 1974.”<sup>1</sup> The claimant does not specify an amount of unpaid Scout pay that is still due to her husband and does not explain the basis for any additional pay based on evidence describing the amount that her late husband received compared to his proper entitlement.

In disallowing the claim, DOHA’s adjudicators explained that there is no statutory authority to retroactively pay Filipino veterans at the same rate of pay in U.S dollars as that received by members of the United States armed forces for the same rank/grade at that time. DOHA’s adjudicators also explained how the Barring Act, now codified as amended at 31 U.S.C. § 3702,<sup>2</sup> precluded payment of any claim for military pay and allowances unless it was presented within 10 years (now six years) of accrual. The claimant had not offered DOHA’s adjudicators any evidence to show that any part of the government had received a claim for “equalization pay” and Scout pay until September 16, 2008.

The claimant asks for reconsideration based on a copy of a document she now offers which shows that on October 29, 1974, the General Accounting Office received a letter from the deceased veteran dated August 15, 1974, requesting “Equalization Pay.” She explains that her late husband’s service was from June 1, 1943, until January 1946, and that she and her husband had believed that all members serving under USAFFE (United States Army Forces Far East), were entitled to such benefits.

### **Discussion**

The explanation for the disallowance offered by DOHA’s adjudicators concerning “equalization pay” requires no further elaboration. Assuming the responsibility of the United States for Philippine Scout pay earned during the Second World War, and ignoring the late submission of documentary evidence and the fact that the letter only referred to “Equalization Pay,” the claimant still does not present a cognizable claim for any additional Scout pay, which is distinguishable from claimant’s “equalization pay” claim.

To the extent that the claimant is asking for amounts beyond the “equalization claim,” she is asking us to develop her deceased husband’s pay records and pay her anything that may possibly still be due to him. By itself, this is not a valid claim. The claimant has not stated the amount she is claiming and the reasons why the Department of Defense owes her that amount, and she has not included supporting statements and documentary evidence. *See* Department of

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<sup>1</sup>The 89<sup>th</sup> Congress met between January 1965 and January 1967, not in 1974. The 93d Congress was in session in November 1974.

<sup>2</sup>The Act of October 9, 1940, chapter 788, 54 Stat. 1061 stated that a claim was forever barred unless it was received within 10 years of accrual. This period was shortened to six years under Pub. L. No. 93-604, title VIII, 88 Stat. 1965 (1975).

Defense (DoD) Instruction 1340.21, ¶ E5.3.<sup>3</sup> It is well-established that claims for anything possibly due to a claimant are “dragnet” claims that are too general and indefinite for adjudication. *See* the Comptroller General’s decision in B-89349 and B-58690, Aug. 2, 1955. *See also* DOHA Claims Case No. 08051901 (May 22, 2008). The claimant must prove, by clear and convincing evidence, on the written record, that the United States is liable to her for an amount claimed. Finally, as DOHA’s adjudicators explained, even if the claimant had presented a proper claim, it would likely be barred from payment under the Act of October 9, 1940.

Our discussion here does not affect any entitlements administered by the Secretary of Veterans’ Affairs.

### **Conclusion**

The claimant’s request for relief is denied, and we affirm the September 22, 2008, appeal decision. In accordance with DoD Instruction 1340.21, ¶ E7.15.2<sup>4</sup> this is the final administrative action 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  
Member, Claims Appeals Board

Signed: William S. Fields

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William S. Fields  
Member, Claims Appeals Board

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<sup>3</sup>The provision specifying claim format and content of a claim is also codified at 32 C.F.R. Part 282, Appendix C, paragraph (c).

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