

KEYWORDS: claim for Philippine Army Scout Pay

DIGEST: A claim for Philippine Scout pay is barred under the Act of October 9, 1940, when the claimant, the service member's widow, did not present it to an authorized representative of the United States until 2008, more than 59 years after he was discharged from the service.

CASENO: 08102902

DATE: 11/4/2008

DATE: November 4, 2008

In Re:)))))
[REDACTED])))))
Claimant)))))

Claims Case No. 08102902

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

A claim for Philippine Scout pay is barred under the Act of October 9, 1940, when the claimant, the service member's widow, did not present it to an authorized representative of the United States until 2008, more than 59 years after he was discharged from the service.

DECISION

The widow of a Philippine veteran during and just after World War II requests reconsideration of the September 30, 2008, decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 08091612 in which DOHA denied her claim for Philippine Army and Philippine Scout pay, and "Equalization Pay" during the same period.

Background

The record shows that the claimant's husband died in 1981. He had served in the Philippine Commonwealth Army from February 11, 1945, until January 19, 1946, and he served as a Philippine Scout in the Army of the United States from January 24, 1946, until January 26, 1949.

DOHA's adjudicators denied any claim for the Philippine Army/Philippine Scout pay because there is no evidence to demonstrate that the claim was presented to us or a proper agent of the United States under prior law before September 16, 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 not relevant here, within ten years of accrual. The claim accrued no later than the date that the claimant's husband was discharged on January 26, 1949. Under the law as it then existed, any pay for service in the Philippine Scouts had to be received in the General Accounting Office (now Government Accountability Office) by January 26, 1959. 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).¹

DOHA's adjudicators denied the claim for "Equalization Pay" because it is not authorized under any United States law. They explained to the claimant that since the end of World War II, legislation had been introduced from time to time in the United States Congress to authorize retroactive pay for Philippine veterans that was equal to that of their American counterparts, *i.e.*, pay at the same rate in US dollars for Filipino members as was paid to members of the United States Army of equal rank at that time. However, no such legislation was ever enacted.

On reconsideration, the claimant renews her claim for equalization pay and unspecified additional pay for her husband's service in the Philippine Army and Philippine Scouts. Additionally, she seeks "Survivor's Benefits, Pay and Travel Allowances and Retirement Pay." The claimant recognizes that her claim is late, but she argues that "lack of information and ignorance played a major role in my delay." She states that she did not have the benefit of any formal education, and is appealing for "humanitarian reasons."

Discussion

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. As explained by the Comptroller General in decision in B-168483, Jan. 2, 1970,

¹31 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 primary purpose of the Act of October 9, 1940, is to relieve the government of the necessity of retaining and examining old records for the purpose of settling stale claims. While the Act of October 9, 1940, was dispositive of the claim in that decision, as well as this one, the Comptroller General also mentioned that no legislation had been approved by Congress allowing the equalization of pay for Philippine Scouts.²

Even if her claim had not been barred for untimeliness, the claimant did not present a proper claim because she did not request a specific sum based on a demonstrated difference in pay between what the claimant's husband actually received and what he should have received, apart from the "equalization pay" portion of the claim. Moreover, the claimant does not request specific sums, or offer any justification, for her new claims for "Survivor's Benefits, Pay and Travel Allowances and Retirement Pay," and there is no indication whether any these would be cognizable by the Department of Defense.

The decision to bar this claim 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, ¶ E7.15.2,³ the September 30, 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

²The claimant in B-168483, *supra*, was a Scout serving under an enlistment prior to the Armed Forces Voluntary Recruitment Act of 1945, and the Comptroller's comments about "equalization pay" would apply with equal effect to the claimant's husband's service prior to January 24, 1946. The claimant's husband apparently also served in the "new Philippine Scouts" under Section 14 of the Armed Forces Voluntary Recruitment Act of 1945, ch. 393, 59 Stat. 543, but all claims are barred for the reasons indicated herein. For such veterans not living in the U.S., some benefits may be available through the Department of Veterans Affairs, but "shall be made at a rate in pesos as is equivalent to \$0.50 for each dollar authorized." See www.vba.va.gov/bln/21/Foreign/philscouts.htm (Current as of Oct. 30, 2008).

³This provision is also codified at 32 C.F.R. Part 282, Appendix E, subparagraph (o)(2).

Signed: William S. Fields

William S. Fields
Member, Claims Appeals Board