

DATE: November 26, 2008

In Re:)	
[Redacted])	
Claimant)	Claims Case No.08112402

**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. The claim must also be filed within the time limit specified by law.

DECISION

The widow of a former member of the Philippine Commonwealth Army requests reconsideration of the October 21, 2001, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 08101701. In that decision, DOHA disallowed her claim on behalf of her deceased husband for “equalization pay” and/or Philippine Scout pay incident to her husband’s service during the Second World War. The widow states that her husband served in the Philippine Commonwealth Army from December 8, 1941, to June 30, 1946. Although she provides some amounts her husband did receive, she does not specify an amount of “equalization pay” to which her husband might have been entitled. She bases her claim on two bills—“H.R. 955 and H.R. 1181, 89th Congress, introduced in the United States House of Representative [sic] on January 4, 1965”—which she believes were enacted into law. She also does not specify an amount of unpaid Scout pay that is still due 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.

Discussion

In disallowing the claim, DOHA's adjudicators explained that there is no statutory authority to retroactively pay Filipino veterans the same rate of pay in U.S. dollars received by members of the United States armed forces for the same rank/grade at that time, because no legislation was ever enacted for that purpose. DOHA's adjudicators also explained that the Barring Act, now codified as amended at 31 U.S.C. § 3702,¹ precluded payment of any claim for military pay and allowances unless it was presented within ten years (now 6 years) of accrual. There is no evidence that the government received a claim for "equalization pay" and/or Scout pay until October 17, 2008.

In her request for reconsideration, the widow restates her claim and attributes the lateness of the claim to a lack of knowledge by her and her late husband regarding the time limit for filing a claim.

With regard to the substance of the widow's claim, DOHA's adjudicators properly explained that no "equalization pay" is payable because no law authorizing such payment was ever enacted. For Philippine Scout pay, even assuming the responsibility of the United States for Scout pay and ignoring the long delay in filing a claim, the widow has not presented a cognizable claim. A claimant must state the amount claimed and the reasons why the Department of Defense owes that amount; she must also submit supporting statements and documentary evidence to prove the claim. *See* Department of Defense (DoD) Instruction 1340.21, ¶ E5.3.² In this case, the widow has not presented the clear and convincing evidence necessary to support a claim. *See* DOHA Claims Case No. 08051901 (May 22, 2008).

Moreover, as discussed above, the claim for Philippine Scout pay presented here is barred by the Barring Act, now codified as amended at 31 U.S.C. § 3702. We have no authority to modify or waive the provisions of the Barring Act or to make any exceptions to the time limitations it imposes. *See* Comptroller General decision B-261461, Nov. 27, 1995.

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

Conclusion

¹The 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. The period was shortened to six years under Pub. L. No. 93-604, title VIII, 88 Stat. 1965 (1975).

²The provision specifying claim format and content of a claim is also codified at 32 C.F.R. Part 282, Appendix C, paragraph (c).

The widow's request for relief is denied, and we affirm the October 21, 2008, appeal decision. In accordance with DoD Instruction 1340.21, ¶ E7.15.2,³ 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: Catherine M. Engstrom

Catherine M. Engstrom
Member, Claims Appeals Board

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