

KEYWORDS: claim for “equalization pay”

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. Under the provisions of Department of Defense Instruction 1340.21, the Defense Office of Hearings and Appeals generally must receive a request for reconsideration of an appeal decision within 30 days of the date of issuance of the decision, and in no event later than 60 days.

CASENO: 2008-CL-061904.2

DATE: 6/30/2010

DATE: June 30, 2010

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In Re: )  
[REDACTED] ) Claims Case No. 2008-CL-061904.2  
Claimant )

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**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. Under the provisions of Department of Defense Instruction 1340.21, the Defense Office of Hearings and Appeals generally must receive a request for reconsideration of an appeal decision within 30 days of the date of issuance of the decision, and in no event later than 60 days.

**DECISION**

A claimant who asserts that she is the widow of a former member of the Philippine Army requests reconsideration of the June 26, 2008, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 08061904. In that decision, DOHA disallowed her claim on behalf of the former member for “equalization pay” incident to his service during the

Second World War. He served in the Philippine Army from April 24, 1943, to March 24, 1946. The record reflects that he applied for “equalization pay” on May 22, 1972. She does not specify an amount of “equalization pay” to which he might have been entitled.

## **Background**

In disallowing the claim, the 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. In addition, the adjudicators explained that as required by Department of Defense Instruction 1340.21 (Instruction), ¶ E5.4, “a claim submitted by the claimant’s agent or attorney must include or have attached a duly executed power of attorney or other documentary evidence of the agent’s or attorney’s right to act for the claimant.” The adjudicators pointed out that no such document was submitted. Further, the appeal decision advised the claimant that she had the right to request reconsideration of the decision, but that DOHA had to receive such a request within 30 days of the date of the appeal decision. DOHA also advised the claimant that the thirty-day deadline may be extended for up to an additional 30 days for good cause shown, if the request for extension of time is actually received within the original 30 days. She was further advised that no request for reconsideration would be accepted after the time had expired. The record shows that the request for reconsideration was received by DOHA on June 29, 2010.

In her request for reconsideration, the claimant restates her claim for “equalization pay.” She states that although her husband died in 1972, he should still be paid “equalization pay” even if the law was enacted after he died. She states that he was assured by the General Accounting Office (now Government Accountability Office) that his claim would be submitted to the Secretary of the Army for consideration once the bill was enacted into law.<sup>1</sup>

## **Discussion**

First, DOHA did not receive a request for reconsideration within 30 days of the date of the appeal decision. DOHA received the claimant’s request for reconsideration more than two years after the issuance of the appeal decision. Even if DOHA had timely received the claimant’s request, DOHA’s adjudicators properly explained that no “equalization pay” is payable because no law authorizing such payment was ever enacted. With regard to any other amount claimed, 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* ¶ E5.3 of the Instruction. In this case, the claimant has not presented the clear and convincing evidence necessary to support a claim. *See* DOHA Claims Case No. 08051901 (May 22, 2008).

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<sup>1</sup> We note that the record contains a letter dated July 26, 1972, from the GAO advising the former member of the Philippine Army that his claim for equalization pay was being returned because no bill had been enacted into law. Further, the GAO explained that if and when the bill was enacted into law, he should file his claim with the Secretary of the Army.

We do note that in 2009, the Secretary of Veterans Affairs (VA) announced a new time-limited monetary benefit for eligible members of the Philippine military. However, the VA and the Embassy of the United States in Manila are responsible for accepting those claims. *See* <http://manila.usembassy.gov>.

### **Conclusion**

The claimant's request for relief is denied, and the June 26, 2008, appeal decision is the final administrative action of the Department of Defense in this matter. *See* ¶ E7.11 of the Instruction.

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: Catherine M. Engstrom

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Catherine M. Engstrom  
Member, Claims Appeals Board