DATE: October 2, 2012

In Re:	)	
[REDACTED]	)	Claims Case No. 2012-CL-030103.2
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. The claim must also be filed within the time limit specified by law.

DECISION

The claimant, the son of a former member of the Philippine Army and his deceased widow,[1] requests reconsideration of the April 2, 2012, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2012-CL-030103. In that decision, this Office denied the claimant's claims for an old age pension and a Survivor Benefit Plan (SBP) annuity incident to his father's service during the Second World War.

Background

In the appeal decision, the DOHA adjudicator determined that the claimant failed to state and prove a claim incident to his father's active duty service in the Philippine Army from September 1, 1941, through July 30, 1945.[2] He also explained that even if the claimant had a valid claim, payment would be prohibited under the "Barring Act," 31 U.S.C. § 3702 (b).[3]

---

[1] In the appeal decision, the DOHA adjudicator examined the claim based on the assumption that the claimant was who he purported to be, the son of a former member of the Philippine Army and his deceased widow.

[2] The record reflects that the member was assigned to Reserve Officer Training Corps units from January 1, 1946, through March 17, 1948. He then enlisted in the Armed Forces of the Philippines (AFP) and served in various enlisted grades until he retired on September 1, 1969, as a Second Lieutenant in the Philippine Constabulary (PC), a component of the AFP.

[3] Any claim for pay for his father's service in the U.S. Army would be barred by the six-year statute of limitations established by 31 U.S.C. § 3702(b)(1), popularly known as the "Barring Act."

A representative of the claimant has requested reconsideration. The representative requests that our Office refer to the provisions of mustering-out pay. The representative also claims service-connected disability pay by virtue of the father's time as a prisoner of war (this includes compensation and burial allowance), and benefits based upon his father's GI insurance.

Discussion

The burden of proving the existence of a valid claim against the United States is on the person asserting the claim. *See* DOHA Claims Case No. 2011-CL-100714.2 (January 20, 2012), and DOHA Claims Case No. 08112402 (November 26, 2008). A claimant must prove by clear and convincing evidence on the written record that the United States Department of Defense is liable under the law for the amount claimed. The adjudicator correctly explained why the claimant did not prove his claims. He also explained the application of the "Barring Act," 31 U.S.C. § 3702(b). *See* DoD Instruction 1340.21 (hereinafter Instruction) ¶ E5.7 (May 12, 2007). The adjudicator specifically explained that a claim for a pension based on old age is not among the types of claims cognizable under 31 U.S.C. § 3702(a)(1). In regard to his claim for an SBP annuity, the adjudicator explained that even if it was not time-barred, his claim would still not be allowed because there is no evidence that his father participated in SBP. Since most of his father's 29 years of service were in the AFP, his eligibility to participate in the SBP, a United States government program, seems unlikely.

As for the new claims for mustering-out pay, disability pay, and insurance payments he raises in his reconsideration request, all relevant evidence to prove the claim should be presented when a claim is first submitted. In the absence of compelling circumstances, evidence that is presented at later stages of the administrative process will not be considered. *See* Instruction ¶ E5.7. In this instance, even if this Office were to examine the record for mustering-out pay, it would also be prohibited under the "Barring Act," 31 U.S.C. § 3702(b). Even if the claim for mustering-out pay was not time-barred, his claim would still not be allowed because he is not eligible under the law. The Mustering-Out Payment Act of 1944 provided that only those members of the Armed Forces who were engaged in active service during World War II and who were discharged or relieved from active service were eligible to receive mustering-out pay under the Act. This benefit is not transferable. As for the claim for insurance payments, the claimant has not presented any evidence that the United States is liable to him for insurance payments. This Office further notes that insurance payments are not among the types of claims cognizable under 31 U.S.C. § 3702(a)(1). As for any service-connected disability or burial compensation, any claims that would have any merit would only be for the benefit of the father, not the son.

Finally, the adjudicator advised the claimant that he may request reconsideration of the appeal decision, but under ¶ E7.13 of the Instruction, DOHA had to receive such a request within 30 days of the date of the decision, April 2, 2012. The adjudicator also advised the claimant that this deadline may be extended for up to an additional thirty days for good cause shown, and no request for reconsideration may be accepted after this time had expired. A fax number was provided to the claimant to assist in meeting the deadline.[4]

---

[4] DOHA received the request for reconsideration on September 27, 2012, with no request for additional time or good cause shown. Even with an extension, the latest date on which a request for reconsideration could be granted was June 1, 2012.

Conclusion

The claimant's request for relief is denied, and we affirm the April 2, 2012, appeal decision. In accordance with the Instruction ¶ E7.11, this is the final administrative action of the Department of Defense in this matter.

///Original Signed///

Jean E. Smallin
Chairman, Claims Appeals Board

///Original Signed///

Catherine M. Engstrom
Member, Claims Appeals Board

///Original Signed///

Natalie Lewis Bley
Member, Claims Appeals Board