FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20579

In the Matter of the Claim of (b) (6) Under the Guam World War II Loyalty Recognition Act, Title XVII, Public Law 114-328	Claim No. GUAM-3711 Decision No. GUAM-3100

FINAL DECISION

Claimant objects to the Commission's Proposed Decision denying her claim under the Guam World War II Loyalty Recognition Act for injuries suffered as a result of the occupation of Guam by Imperial Japanese military forces during World War II.[1] In the Proposed Decision, the Commission concluded that it did not have the authority to determine Claimant's eligibility for payment because she submitted her claim after the June 20, 2018 filing deadline established under the Act. On objection, Claimant acknowledges that her claim was not timely filed but nevertheless argues that the Commission should consider the merits of her submissions and find her eligible for a payment. After carefully considering all of Claimant arguments, we again conclude that the Commission does not have the authority to waive or extend the statutory filing deadline. We thus affirm the denial of this claim.

BACKGROUND

Claimant brought this claim under the Guam World War II Loyalty Recognition Act,

[1] Guam World War II Loyalty Recognition Act, Pub. L. 114-328, tit. XVII, 130 Stat. 2642 (2016) ("GLRA" or "Act").

seeking compensation for hiding to evade internment, internment, and forced march. Claimant's claim was notarized on May 12, 2020, and acknowledged by the Commission on June 16, 2020. On September 17, 2020, the Commission issued a proposed decision ("Proposed Decision") denying the claim on the ground that it was not filed by the June 20, 2018 filing deadline set forth in the Act.

On September 18, 2020, Claimant filed a notice of objection. Because she did not request an oral hearing, the Commission advised her by letter dated January 6, 2021, that the claim would be decided on the written record and requested that she submit any additional evidence in support of the objection no later than March 8, 2021. Pursuant to this letter, Claimant submitted a statement dated February 18, 2021, and a copy of her birth certificate.

DISCUSSION

The Commission's authority to determine the eligibility of individuals for payment under the Act is limited to claims that were submitted within the statutory filing period. Section 1705(b)(2)(A) provides that "[a]n individual filing a claim for a payment . . . shall file such claim not later than one year after the date on which the Foreign Claims Settlement Commission publishes" notice of the deadline for filing a claim "in the Federal Register" and "in newspaper, radio, and television media in Guam."[2] As noted in the Proposed Decision, the Commission published notice in the Federal Register, and newspaper, radio, and television media in Guam on June 20, 2017, announcing the commencement of the Guam Claims Program and setting a filing deadline of June 20, 2018.[3] Thus, Claimant had to submit her claim by June 20, 2018, in order for the Commission to have authority to determine her eligibility for a payment under the Act.

[2] *Id.* §§ 1705(b)(2)(A)-(B). The Commission had 180 days from the date of the Act's enactment, December 23, 2016, to publish this notice. *See id.* § 1705(b)(2)(B).

[3] Notice of Commencement of Claims Adjudication Program and of Deadline for Filing of Claims, 82 Fed. Reg. 28,093 (June 20, 2017).

Because Claimant filed her claim after the June 20, 2018 filing deadline, the claim must be denied.

On objection, Claimant argues that the Commission should consider her eligibility for a payment even though she submitted her claim after the June 20, 2018 statutory filing deadline. She asserts that the Commission should consider the merits of her claim for two reasons: 1) the Commission accepted her claim after the statutory deadline, thus indicating that it would consider the merits of her claim and 2) she was not aware of the filing deadline because the Commission's provision of notice did not reach claimants outside of Guam. None of these arguments, however, undermines the Commission's determination in the Proposed Decision that it does not have the authority to determine Claimant's eligibility for payment because her claim was not timely filed.

Claimant's argument that the Commission's acceptance of her claim after the filing deadline is evidence of its jurisdiction to review the merits of her late-filed submission is without merit. Although the Commission sent the Claimant a letter acknowledging receipt of the claim and assigning a claim number for future correspondence, those actions merely indicated that the claim would be administratively prepared for consideration; they did not guarantee Claimant a decision on the merits of the claim. To the contrary, the Commission's previous jurisprudence in analogous claims shows that its "practice . . . has consistently been to merely deny a claim where it is found to be untimely and make no determination as to the other elements of such claim."[4] These decisions also make clear that the Commission has "no authority to waive or extend" a "statutory limitation" establishing a "terminal date for filing claims" in the event that public notice of a filing deadline published under the statute fails to reach a claimant.[5] Moreover, in the absence

[4] Claim Nos. CZ-5004, 5005, Decision No. CZ-1307 (Final Decision), at 2.

[5] Claim No. IT-10,795, Decision No. IT-1; Claim No. HUNG-22,214, Decision No. HUNG-68. As occurred here under the GLRA, *see infra* note 4, notice of the filing deadline in these programs was published in the Federal Register. *See also* Claim No. CZ-5010, Decision No. CZ-1815 (Final Decision) (holding that the "mere fact that a claimant did not receive notice as provided for [under the statute] does not render his claim timely if filed subsequent to the deadline" and that "publication in the Federal Register is constructive notice to all affected parties irrespective of whether they read such notice or not").

of an express provision authorizing extension of a statutorily-defined filing deadline, the Commission may not treat a late-filed claim as timely "for any reason, however equitable or meritorious it may be."[6]

This conclusion is further supported by the GLRA's carefully-crafted provisions governing the payment of awards by the Department of the Treasury, which evince a clear congressional intent to preclude tolling of the GLRA's one-year filing deadline. In particular, Section 1704(a)(2) of the Act provides that payments to one of the two categories of claimants under the Act—survivors of "compensable Guam decedents"—shall be made by the Secretary of the Treasury "only after all payments are made" to the other category of claimants under the Act—*i.e.*, "compensable Guam victims."[7]

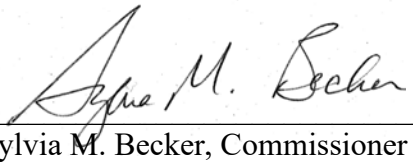
In light of these provisions, allowing the adjudication of late-filed claims submitted by claimants who, like Claimant here, seek compensation as "compensable Guam victims" would make the GLRA's payment scheme extremely difficult to administer. The Treasury Department's ability to satisfy its payment obligations under the Act would be compromised in one of two ways: either (1) Treasury would never be able to know when to commence payments to survivors of "compensable Guam decedents," thereby delaying their awards indefinitely or (2) if Treasury had already commenced payments to such claimants, a potential violation of the clear payment priority mandate of Section 1704(a)(2) could automatically arise. Congress obviously did not intend this to be the case. Moreover, these concerns are not speculative: other late-filing claimants have made requests for relief as late as 2021, over four years after the filing deadline.[8]

[6] Claim Nos. CZ-5004, 5005, Decision No. CZ-1307, (Final Decision) at 2.
[7] Guam World War II Loyalty Recognition Act § 1704(a)(2).
[8] *See* Claim No. GUAM-3634 (Claim File) (seeking merits review of a claim filed in February 2021 and denied for not being timely filed).

In sum, because adjudicating late-filed claims on the merits would disrupt—if not entirely frustrate—the statutory scheme for distribution of funds to other claimants who diligently pursued their claims under the Act, we discern no intent on the part of Congress to authorize the Commission to toll the GLRA's statutory filing period.[9] We are thus constrained to conclude that the Commission has no authority to waive or extend the statutory filing period to consider Claimant's claim as timely filed.

Therefore, while we sympathize with Claimant for what she endured, the denial of this claim set forth in the Proposed Decision is hereby affirmed. This constitutes the Commission's final determination in this claim.

Dated at Washington, DC, October 26, 2021
and entered as the Final Decision
of the Commission.



Sylvia M. Becker, Commissioner

Patrick Hovakimian, Commissioner

[9] The Commission previously has cited delay in the distribution of funds as a valid basis on which to reject late-filed claims. *See, e.g.,* Claim Nos. CZ-5004, 5005, Decision No. CZ-1307 (Final Decision) at 2 ("The argument that the statute of limitations for the filing of claims was tolled . . . would have the effect of holding up the distribution of funds to other claimants who diligently pursued their claims under the statute. Obviously the Congress did not intend that this be the case."). *See also* Claim No. LIB-II-161, Decision No. LIB-II-134, (Order) at 7-9. In contrast, the Commission has found the requisite congressional intent to consider late-filed claims in "pre-settlement adjudication" programs, *i.e.*, programs where Congress has authorized the adjudication of claims *before* funds are available to pay awards. In that context, the Commission has stated it may consider late-filed claims "so long as consideration thereof does not impede the determination of those claims which were timely filed." Claim No. LIB-II-161, Decision No. LIB-II-134 (Order) at 6 & n.2 (citing Claim No. CU-8285, Decision No. CU-5728, at 2). The rationale for this exception, however, is narrow: it was applied to give effect to the "declared purpose of the Congress in enacting [the] legislation," which "was to provide a vehicle for American nationals to have the validity and amounts of their losses decided by the Commission and reported to the Secretary of State for possible use in future negotiations of a claims settlement agreement. . . ." Claim No. CU-8255, Decision No. CU-3580, at 2. Because such negotiations would not occur until some future date (if at all), the allowance of certain late-filed claims was deemed to be consistent with Congress' intent. Given the absence of any similar purpose when Congress enacted the GLRA, we do not regard these decisions as providing any support for Claimant's arguments here.

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In the Matter of the Claim of	
(b) (6)	Claim No. GUAM-3711
	Decision No. GUAM-3100
Under the Guam World War II Loyalty Recognition Act, Title XVII, Public Law 114-328	

PROPOSED DECISION

Claimant brings this claim under the Guam World War II Loyalty Recognition Act for injuries suffered as a result of the occupation of Guam by Imperial Japanese military forces during World War II.[1] To be eligible for a consideration under the Act, a claim must be filed not later than one year after the Commission published notice of the deadline for filing claims, *i.e.* June 20, 2018. Because Claimant's claim was filed with the Commission after the June 20, 2018 deadline, it is denied.

The Commission's authority to adjudicate claims under Section 1704 of the Act is set forth in Section 1705.[2] Among other things, Section 1705 provides that "[a]n individual filing a claim for a payment under section 1704 shall file such claim not later than one year after the date on which the [Commission] publishes . . . a notice of the deadline for filing a claim" in the Federal Register, and in newspaper, radio, and television media in Guam.[3]

As required under Section 1705, on June 20, 2017, the Commission published notice in the Federal Register announcing the commencement of the Guam Claims Program and setting a filing

[1] Guam World War II Loyalty Recognition Act, Pub. L. 114-328, tit. XVII, 130 Stat. 2642 (2016) ("GLRA" or "Act").
[2] *Id.* § 1705(a)(1).
[3] *Id.* §§ 1705(b)(2)(A)-(B).

deadline of June 20, 2018.[4] On that same date, the Commission also published notice of the deadline for filing claims in newspaper, radio, and television media in Guam. Consequently, the statutory deadline for filing claims under the Act was June 20, 2018.

The Commission's records indicate that Claimant's Statement of Claim was filed with the Commission after June 20, 2018. The claim was thus filed after the expiration of the one-year filing period established by the Act.

Accordingly, while the Commission recognizes that Claimant may be among those residents of Guam who "suffered unspeakable harm as a result of the occupation of Guam by Imperial Japanese military forces during World War II,"[5] it is constrained to conclude that this claim was not timely filed under the Act. Thus, this claim must be and is hereby denied. The Commission makes no determinations about any other aspect of this claim.

Dated at Washington, DC, September 17, 2020
and entered as the Proposed Decision
of the Commission.

Sylvia M. Becker, Commissioner

Patrick Hovakimian, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, any objections must be filed within 15 days of delivery of this Proposed Decision. Absent objection, this decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after delivery, unless the Commission otherwise orders. FCSC Regulations, 45 C.F.R. §§ 509.5 (e), (g), 510.3 (2018).

[4] Notice of Commencement of Claims Adjudication Program and of Deadline for Filing of Claims, 82 Fed. Reg. 28,093 (June 20, 2017). The Commission also published amendments to its regulations in the Federal Register, 82 Fed. Reg. 16,124 (April 3, 2017), which included the following provision:

> § 510.2 Time for filing.
> Claims for payments under the Guam World War II Loyalty Recognition Act, Title XVII, Pub. L. No. 114-328 (the "Act"), must be filed not later than one year after the date on which the Commission publishes the notice described in section 1705(b)(2)(B) of the Act.

[5] GLRA, §1702(a).