



CONFERENCE ON JEWISH MATERIAL CLAIMS AGAINST GERMANY, Inc.
15 East 26th Street, Room 906, New York, NY 10010
Tel: (212) 696-4944, Fax: (212) 679-2126, E-mail: info@claimscon.org
www.claimscon.org

Germany

Pensions for Work in Ghettos (ZRBG)

Supplement to the Claims Conference Handbook (June 2003)

SUMMARY

Since 1997, the German government has been awarding old age pensions to Holocaust survivors based upon work performed, for some form of salary, payment or benefit in Polish ghettos during World War II. In 2002, Germany expanded the existing legislation, enacting a Law for the Payment of Pensions for Periods of Employment in a Ghetto (Gesetz zur Zahlbarmachung von Renten aus Beschäftigungen in einem Ghetto, known as the ZRBG or “Ghetto Pension”). Former residents of any European Ghetto that was incorporated or annexed to the German Reich may now qualify, providing that certain work-related preconditions are met.

A 5-year qualifying period applies. If work for “payment” in a recognized Ghetto does not suffice to fulfill this 5-year (60-month) minimum, then periods of Nazi persecution and/or foreign working times after the war may serve, under certain conditions, to supplement the work period in the ghetto.

- ❖ *Contribution Periods* include the relevant work times (when compensated) in an accepted Ghetto.
- ❖ *Substitution Periods* are non-compensated work periods, such as periods of Nazi persecution (concentration camp, similar conditions of confinement, slave or forced labor), time in a Displaced Persons camp (“DP camp”) after the war, and schooling and child rearing periods.
- ❖ *Substitution Periods* may also include post-war insured work in countries that have bilateral Social Security Agreements with the Federal Republic of Germany. Currently, these are: Australia, Bulgaria, Chile, Israel, Japan, the former Yugoslavia, Canada/Quebec, Croatia, Morocco, Poland, Switzerland, Slovenia, Turkey, Tunisia, Hungary, the Czech Republic and the USA.

The following information intends to supplement the **Claims Conference Handbook** of June 2003. The Handbook can be downloaded from the Claims Conference’s website, www.claimscon.org, in English, Hebrew, German and Spanish.

The Claims Conference is not involved in the administration, implementation or processing of Social Insurance pensions for the German government or its social security institutions. The information presented herein is intended for information purposes only and as a general guide to certain issues involved in filing applications for Social Security pensions. The information is not intended as legal advice. It is a summary of specific issues and does not represent a definitive or complete statement of the programs and policies of the governments or agencies mentioned. The information may not address the special needs, interests and circumstances of individual applicants. To the best of our knowledge the information is correct as of the date of this document and this information may change subsequent to the said date.

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EFFECT ON OTHER COMPENSATION

The German Ghetto Pension is separate from Holocaust restitution or compensation programs. Therefore, collecting Holocaust restitution or compensation monies should not affect eligibility to the Ghetto pension, if the requirements for this pension are fulfilled.

EFFECT ON OTHER BENEFITS

If awarded, the Ghetto Pension will have no bearing on benefits, which survivors may be receiving from their current country of residence. The German Social Insurance authorities state that “pensions ... can only be paid if they are really to the beneficiary’s advantage. Therefore the pensions shall not be paid into a foreign country if benefits awarded by the country of residence (such as non contributory social benefits) are reduced or cease as a result of the payment of said German pension.”

Residents of the United States should refer to United States Public Law 103-286 (House Resolution 1873) which states that payments made to victims of Nazi persecution should be disregarded in determining eligibility for benefits or services based on need.

Residents of Israel should refer to Regulation 17(13) of the Income Assurance Regulations 5742-1982 (amended in December 2003), which states that payments made under the ZRBG should be disregarded in determining eligibility for Income Assurance Benefits from July, 1, 1997.

WIDOW OR WIDOWER PENSIONS

It is possible to apply for benefits on behalf of a deceased spouse if that spouse fulfilled the specified work requirements, i.e. performed voluntary and compensated work in an accepted Ghetto.

Surviving spouses will be awarded a percentage of their deceased spouses’ entitlement. Surviving spouses may not claim for their deceased spouse’s entitlement if they are remarried. Heirs other than spouses (i.e. children of the deceased) are not eligible to collect the deceased’s entitlement.

DEADLINES

There is no deadline to apply for the ZRBG pension.

A June 30, 2003 deadline applied only to retroactive awards going back to 1 July 1997. Approved applications for the ZRBG pension filed after June 30, 2003 will receive retroactive payment to date of application.

DECISIONS (*BESHEID*)

Decisions are issued in German. If the claimant cannot read German or does not know anyone who can assist them, the issuing insurance office in Germany will respond to claimant enquiries (either via telephone or through post).

APPEALS PROCEEDINGS & APPELLATE COURTS

Due to the unprecedented nature of this law, many of the legal issues surrounding its interpretation have yet to be reviewed by the German Federal Social Courts. Therefore, a number of claims that are initially rejected may be reversed on appeal.

The Claims Conference, in conjunction with the National Insurance Institute of Israel, has been actively engaged in assisting the survivor community to understand the new regulations, and in pressing the German government for any interpretation or implementation of the new legislation that could secure this pension for as many survivors as possible. In March 2004 a Claims Conference delegation met with the German Minister of Health and Social Welfare to discuss problems with the Ghetto Pension Law (ZRBG). The Claims Conference delegation raised concerns regarding the way the law is being interpreted by the regional pension authorities. The Minister responded positively to the concerns and indicated that she would raise them with the independent authorities responsible for implementation of the law. The Claims Conference continues to monitor and to press this issue with German regulators.

TIMELY APPEALS SHOULD BE FILED BY CLAIMANTS IN ORDER TO PRESERVE THEIR RIGHTS AND ENTITLEMENT TO THIS PENSION. THIS IS ALL THE MORE IMPORTANT SINCE THE SO-CALLED “REINSTATEMENT IN A PREVIOUS CONDITION” (IN OTHER WORDS, THE RE-ACCEPTANCE OF A LAPSED CLAIM) IS AN EXTREMELY DIFFICULT LEGAL PROCEEDING TO WIN.

ALL CLAIMANTS HAVE THE OPTION OF FILING AN APPEAL.

CLAIMANTS SHOULD CONSULT A LEGAL EXPERT WHEN FILING AN APPEAL.

I. ADMINISTRATIVE APPEALS (*WIDERSPRÜCHE*)

After receiving a negative decision, the first stage of appeal is usually at the administrative level. This appeal is free of cost to the claimant. The applicant must respond to the Social Insurance administration that he or she wishes to appeal the negative decision. All responses (appeals) must be written and received in Germany by the competent German insurance authority by the date indicated in the decision (See below). Postmarks are not admissible.

Grounds for the appeal must be stated in the response. The claimant should indicate whether substantiating documents are to follow.

After a claimant files a written appeal, German law permits the social insurance office, which initially ruled on the claim, to review its decision prior to taking the case to court. This is meant to reduce the number of claims brought before the Social Law Courts, since certain cases can be settled through administrative proceedings. The in-house Review Panel reviews the disputed decision and either confirms or reverses the decision.

If the appeal is approved, the pension insurance office is required to change its decision. However, appeals can also be turned down (i.e. the pension office's earlier decision is upheld). If the claimant remains dissatisfied with the decision made by the internal appeals board, legal proceedings can be brought against the relevant pension office by pursuing the appeal judicially through the Social Courts of Law.

DEADLINES

The deadline for filing an administrative appeal depends upon the current residence of the claimant **or** of his/her legal representative—either in Germany or abroad.

- If the claimant or the legal representative is living *within* Germany, the deadline for an appeal is **one month** from the date of the decision (*Bescheid*).
- If the claimant or the representative is living outside of Germany, the deadline is **three months** from the date of the decision.

II. SOCIAL LAW COURTS (APPELLATE COURTS)

If the administrative review fails to reverse the negative decision, the claimant can pursue the claim through the Social Law Courts: firstly, the *Sozialgericht*, then the *Landessozialgericht*. Rulings of these courts create legal precedent to be followed by social insurance offices.

Affidavits, or detailed personal narratives and descriptions of the working conditions in a ghetto by the claimant, conducive to proving the claimant's eligibility for this pension, are accepted in these courts.

Appeals may be pursued up to the Supreme Court level, through the Federal Social Law Court (*Bundessozialgericht*).

