



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

B-178576

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October 4, 1973

Mrs. Juanita Madford  
1630 A Sherman Street  
Alameda, California 94501

Dear Mrs. Madford:

Further reference is made to your letter dated March 29, 1973, concerning your claim for the one-half share of the arrears of pay and combat pay reserved for the father of your late son, Private First Class Robert D. Madford, USMC, Serial No. 1173442, who died September 15, 1951, the other one-half share, representing \$137.74 arrears of pay and \$11.25 combat pay having been allowed you by settlements of our Transportation and Claims Division dated December 28, 1951 and July 20, 1953, respectively.

The record shows that your claim for the one-half share reserved for Mr. Madford was the subject of a letter from our Transportation and Claims Division dated March 22, 1973, in which you were advised that under the provisions of the act of October 9, 1940, 54 Stat. 1061, 31 U.S.C. 71a, which requires that any claim not received in the General Accounting Office within ten full years after the date the claim first accrued, your claim for that reserved share must be disallowed since no claim by a proper claimant was filed with this Office within ten full years from the date of accrual.

You say that if we check our files on June 22, 1953, we will find that you did file a claim, but that one-half of the claimed amount was being held for your son's father. You say also that you had neither seen nor heard from your late son's father in fifteen years, but now that he is dead you are refiling your claim for his one-half share of your son's estate and feel that you should be paid, with interest.

The record shows that you received \$168.99, representing your one-half share of the amount due your late son at his death, and that the other half was reserved for the decedent's natural father pending receipt of a claim from him by this Office, but that no such claim was ever received. The record also shows that a certified copy of a Certificate of Death from the Department of Health of the State of Arizona issued on February 17, 1969, shows the date of death of a Cecil Madford, father of Robert D. Madford, to be June 23, 1968.

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The act of June 30, 1906, 34 Stat. 750, as amended by the act of February 25, 1946, ch. 35, 60 Stat. 30, 10 U.S.C. 868 (1946 ed.), which governs the manner in which claims for amounts due the estate of deceased military personnel shall be settled and which was in effect at the time of your son's death, provides that in the settlement of the accounts of deceased officers or enlisted personnel, where no demand is presented by a duly appointed legal representative of the estate, the accounting officers may allow the amount found due, if no widow, widower or descendants survive, to the father and mother in equal parts, and if either father or mother be dead, then to the one surviving.

Under the above-mentioned provisions of law, your son's father, in the absence of a claim by a legal representative of your son's estate, would have been entitled to the remaining one-half due at his son's death if he had made a timely claim therefor. Such claim, as well as yours, accrued on September 20, 1951, the date on which evidence establishing proof of the date of your son's death was received by the United States Marine Corps. We have no record of having received a claim from Mr. Madford prior to his death on June 23, 1968, more than seventeen years after his claim first accrued. Since he did not make a claim within ten full years after that date (September 20, 1951), his claim became barred from consideration by this Office by virtue of the 1940 act.

Your claim for the father's share could accrue only upon his death, since you had no right to his share while he remained alive. Since his claim was barred at his death, your claim for his share also must be considered as barred under the act of October 9, 1940.

Accordingly, there is no authority for payment of your claim and the action previously taken by our Transportation and Claims Division is sustained.

With regard to your inquiry as to the disposition of the father's reserved share in the event that you would not be entitled to receive it, monies are appropriated by Congress for the payment of military pay and allowances. Any such appropriated monies which are not used for such purposes remain in the United States Treasury.

Sincerely yours,

Paul G. Dembling

For the Comptroller General  
of the United States