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

E-178554

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December 14, 1973

Mr. Howard U. Constantine III
Route #1, Box 435
Sykesville, Maryland 21784

Dear Mr. Constantine:

Further reference is made to your letter of April 6, 1973, in effect requesting review of settlement of our Transportation and Claims Division dated March 30, 1973, which denied your claim for an amount believed due you as an heir of Raymond P. Long, service number 6070012, who died on June 16, 1942, while serving as a private in the United States Army.

Our Transportation and Claims Division advised you that we were precluded from giving favorable consideration to your claim of January 16, 1973, filed as nephew of the deceased. You were advised that the records pertaining to claims in the case of Raymond P. Long had been destroyed pursuant to law in accordance with our procedure pertaining to claims against the United States, such as this, in which there has been no activity for a period of 12 years or more. As the settlement pointed out, subsidiary records revealed that allowances were issued on June 12, 1946, October 10, 1946, in the amount of \$614.68, and on November 6, 1946, but in general, the subject matter of the claims, the amounts allowed, the identity of the person or persons to whom payment was made could not be ascertained, and further information was not available.

You have now submitted copies of General Accounting Office forms "Notice of Settlement of Claim" and "Advice of Payment of Settlement to Accompany Check," both dated June 12, 1946, which indicate that evidence of the decedent's death was received on October 20, 1945, and that an allowance was issued in favor of Lucille R. Halterman, as sister of Raymond P. Long, deceased, and George Henry Long, his brother, for \$614.68, each. Additionally, it was indicated that the sums allowed represented one-fifth shares of the total amount due, and that the remaining three shares were reserved for the other two brothers and the child of the dead sister.

[Request for Review of Claims Settlement]

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In your letter dated April 6, 1973, you say that the allowances of October 10, 1946, and November 6, 1946, respectively, were issued to Marle Long and Roland Long, brothers of Raymond P. Long. You also say that your father was serving in the Armed Forces at the time and was never notified of the claim, and that you were first informed of it by your aunt, Lucille R. Halterman, several weeks prior to your initial correspondence with our Office. You contend that you are the minor child mentioned in the settlement of June 12, 1946. You also contend that the long period of time lapsed through no neglect on your part and, therefore, you are entitled to the share reserved for the child of Raymond P. Long's deceased sister.

The act of October 9, 1940, as codified in 31 U.S.C. 71a, 237, provides in pertinent part as follows:

"(1) Every claim or demand * * * against the United States cognizable by the General Accounting Office under sections 71 and 236 of this title shall be forever barred unless such claim * * * shall be received in said office within ten full years after the date such claim first accrued: * * *."

The record fails to show that either you or your legal representative filed a claim with the General Accounting Office within 10 years from October 20, 1945, the date of receipt of proof of the decedent's death, which is the date the claim first accrued.

Your claim therefore is barred from consideration by this Office by virtue of the 1940 act. See decision B-174969, February 22, 1972, copy enclosed.

While it is unfortunate that neither you nor your legal guardian was aware of your right to claim the one-fifth share, the 1940 law provides no exceptions in such circumstances nor is there any authority contained therein under which this Office may waive any of the provisions of that act or make any exceptions to the time limitation imposed.

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In view of the above, there is no further action which this Office legally may take on your claim.

Sincerely yours,

Paul G. Dembling
For the Comptroller General
of the United States

Enclosure