

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

FILE: B-185008

DATE: OCT 29 1975

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MATTER OF: Personal Property Claims under 31 U.S.C. 241 (1970)

DIGEST: Settlements of claims for loss of personal property in the cases of 25 Navy members arising out of the same event which were made by the designee of the Secretary of the Navy under Navy regulations pursuant to the provisions of the Military Personnel and Civilian Employees' Claims Act of 1964 are final and conclusive, and our Office is without authority to question that action.

This action is taken in response to a letter dated September 10, 1975, with enclosures (file reference FMP:drb 5890), from the Disbursing Officer, Navy Regional Finance Center, Norfolk, Virginia 23511, requesting an advance decision concerning the propriety of payment of 25 claims of military members for personal property loss in the circumstances described. That letter was forwarded to our Office by endorsement dated September 22, 1975 (file reference NCF-123 5741), from the Commander, Navy Accounting and Finance Center, Washington, D.C. 20376.

The record in the case shows that on August 15, 1974, each of the members in question entrusted his Navy paycheck to an enlisted member of his command for the purpose of cashing such paycheck at an off-base bank. After cashing the checks, but prior to returning to his command, the enlisted member was robbed at gunpoint. It is indicated that each member involved submitted a claim seeking reimbursement for the stolen funds, but that these claims were initially denied on the basis that the cashing procedure was a private arrangement without official sanction and therefore not payable. The reason given for the denial was that by voluntarily entrusting endorsed checks to another person, these members failed to exercise the requisite degree of care in protection of their property necessary for reimbursement.

It is further stated in the file that one of the members involved requested reconsideration, contending that the endorsed checks had been entrusted to an individual "designated" by the command as a standard operating procedure. Although that member's commander denied that assertion and recommended that no payment be awarded, the Navy Judge Advocate General awarded payment in the full amount of the member's claim (\$185).

B-185008

The record shows that following that award, the other members' claims were resubmitted to the Navy Judge Advocate General for reconsideration. By letter dated August 2, 1975, the Navy Judge Advocate General approved payment on the 25 claims because the factual basis of each was identical to the previously approved claim.

The Disbursing Officer states that in view of the difference in professional opinion regarding the legality of the claims and in the absence of a positive assertion by the member's commanding officer that the check cashing procedure leading to the loss was specifically authorized, authority for payment of the claims is not clearly indicated.

Section 3(a) of the Military Personnel and Civilian Employees' Claims Act of 1964, Public Law 88-588, 78 Stat. 767, 31 U.S.C. 241(a) (1970), authorizes the Secretary of the service concerned (or his designee), under such regulations as he may prescribe, to settle and pay claims by service members under his authority for damage to or loss of personal property incident to their service. Subsection 3(c)(3) of that same act, 31 U.S.C. 241(c)(3) (1970), provides that a claim may be allowed only if it were not caused wholly or partly by the negligent or wrongful act of the claimant, his agent, or his employee. Section 4 of that same act, 31 U.S.C. 242 (1970), provides that notwithstanding any other provision of law the settlement of a claim under that act is final and conclusive.

Section 2103 of the Manual of the Navy Judge Advocate General sets forth the circumstances under which claims are payable when the loss of the claimant's personal property occurs incident to his service. Subsection h of that section authorizes payment for loss of personal funds which were accepted by naval personnel, military or civilian, acting with the authority of the commanding officer, for safekeeping, deposit, transmittal, or other authorized disposition, where the funds were neither applied as directed by the owner nor returned to him.

The members' claims result from a loss of property as that term is used in 31 U.S.C. 241(a). The provisions of the Military Personnel and Civilian Employees' Claims Act of 1964 do not in any way preclude consideration of these claims. The determination made by the Navy is not totally inconsistent with the facts involved as they have been reported to us.

B-185008

In view of the provisions of law which are applicable in the circumstances, it is not within the jurisdiction of our Office to review the settlements made concerning claims of Navy members for loss of personal property. See 47 Comp. Gen. 316 (1967); B-180161, January 8, 1974. Compare Macomber v. United States, 335 F. Supp. 197 (D.R.I. 1971).

Since it appears that a determination of the propriety of the claims of the 25 members has been made and payment approved by the designee of the Secretary of the Navy and since such determination is final and conclusive, this Office is without authority to question that action.

E. J. KELLY

Comptroller General
of the United States