

**DECISION**

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

FILE: B-173783

DATE: MAR 2 1976

MATTER OF: Major Jeffrey Allen Rossmann

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**DIGEST:** Where officer's check for pay and allowances was not delivered to bank due to inadvertent failure of Army to process properly an extension of the member's term of service and he issued personal checks which were presented and returned for insufficient funds service charge of \$25 may not be paid to claimant by Government absent statute containing authority for such payment.

This action is in response to the claim of Major Jeffrey Rossmann, USA, for reimbursement of \$25 representing charges for the handling of insufficient fund checks subsequent to the failure of the Department of the Army to forward his military pay directly to his bank.

The claimant indicates that on January 21, 1975, he extended his active duty status to indefinite, thus voiding his normal expiration of military service which would otherwise have occurred. Apparently, this extension of active duty was not properly processed with the United States Army Finance Office with the result that his pay was stopped and deposit of his pay in the First National Bank of Alameda, California, was not accomplished on June 15, 1975, as he expected. The claimant indicates that his May 30, 1975 JUMPS pay statement stated that it was his last pay before discharge and that shortly thereafter he talked to a sergeant in the Personnel Division about his pay. He was apparently advised that the problem would be taken care of. Nevertheless corrective action was apparently not taken in time to permit his June mid-month pay to be issued and no deposit was sent to his bank at that time.

Because his pay was not deposited as he expected five of claimant's checks were not honored by the bank because of insufficient funds on June 19 and 20, 1975. Claimant contends that since these charges were occasioned by the negligence of Letterman Army Medical Center, Personnel Division, in failing to send proper notice of his extension of service to the Army Finance Center, he is entitled to reimbursement thereof. Major Rossmann stated that

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B-173783

upon original application to the Claims Office at Oakland Army Base, California, he was advised that his claim was not payable under Army Regulations and that this position was concurred in by the United States Army Claims Service, Fort Meade, Maryland.

Under the provisions of Part 209 of title 31, Code of Federal Regulations and implementing military regulations including Part 6 of the Department of Defense Military Pay and Allowances Entitlements Manual (see especially subparagraph 60103a(6)) the claimant apparently authorized the forwarding of his net pay to the Alameda First National Bank for credit to his account. Although he was on notice that there was a problem with regard to his pay he issued checks without first ascertaining whether the expected deposit had been received by his bank.

Upon review of the materials submitted and the applicable laws and regulations we find that the position previously taken by the Department is correct. The governing laws and regulations contain no provision for reimbursing a member for charges resulting from overdrafts or insufficient fund checks even though the pay of the individual concerned is normally sent directly to the bank involved. Since the liability of the Government is limited to that provided by the law and regulations, there is no legal basis to pay this claim.

Further, it is well established that, in the absence of a statute so providing, the Government is not liable for the negligent acts of its officers or employees even though committed in the performance of their official duties. See Robertson v. Sichel, 127 U. S. 507, 515 (1888); German Bank v. United States, 148 U. S. 573 (1893); 44 Comp. Gen. 337 (1964). For the reasons stated the member's claim for reimbursement of service charges of \$25 assessed in the circumstances may not be allowed.

The Meritorious Claims Act, the act of April 10, 1928, ch. 334, 45 Stat. 413, 31 U. S. C. 236 (1970), provides that when a claim against the United States is filed in this Office that may not be lawfully adjusted by use of an appropriation theretofore made, but which claim in the judgment of the Comptroller General contains such elements of legal liability or equity as to be deserving of the consideration of the Congress, it shall be submitted to the Congress with his recommendations. The cases reported for the consideration of the Congress have involved equitable circumstances of an unusual nature which are unlikely to constitute a recurring problem.

B-173783

Based on the information submitted, it is not considered that the claim here under consideration has elements of equity of an unusual nature which are unlikely to recur. Accordingly, it is not believed that it would be appropriate to submit a recommendation to the Congress for relief of Major Rossmann.

R. F. Keller

Deputy Comptroller General  
of the United States