

DECISION



A. Hames
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548
P. H. E.

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FILE: B-192554

DATE: October 26, 1978

MATTER OF: Estate of Howard Stokely

DIGEST: Where Government records necessary to either justify or refute a claim have been destroyed pursuant to law, or become unavailable due to the lapse of time, and there is no other documentation available from any source to establish the liability of the United States, this Office has no alternative but to sustain the Claims Division's disallowance of the claim.

// This action is in response to a letter from Mr. Freddie Stokely, which constitutes an appeal from our Claims Division settlement dated October 3, 1975, which disallowed Mr. Stokely's claim for the proceeds of a check allegedly mailed to but never received by his aunt or some other family member after the death of his uncle, Howard Stokely, a former member of the United States Army.

The record shows that on October 7, 1917, Mr. Howell Stokeland was inducted into the United States Army. He was discharged on February 5, 1920. However, the fingerprints of Howard Stokely are identical with those of Howell Stokeland. The record further indicates that Mr. Howard Stokely died on November 16, 1926.

The claimant believes that a check was issued to his uncle in the name of Howell Stokeland in the 1920s or 1930s. In the absence of more specific information on April 4, 1975, our Claims Division requested the claimant to furnish his uncle's service number and the date of his discharge. Upon receipt of this information and since no payment due was identified as a result thereof our Claims Division on October 3, 1975, asked the claimant to furnish further information including the number of the check, date of the check and the name and symbol number of the disbursing officer. The claimant has not furnished this information.

We have been advised by the United States Army Finance and Accounting Center that pay records prior to 1959 have been destroyed pursuant to law relating to disposal of records (see Chapter 33 of title 44, United States Code, and title 41, Code of Federal Regulations, Chapter 101, Part 101-11 - Records

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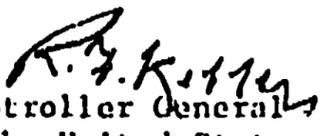
Management). In the absence of records we are unable to identify any payment due the decedent or his estate. Further, if a check was issued we cannot identify it in the absence of the check number, date of the check and the name and symbol number of the disbursing officer. That information is not available from Government records. Thus, this Office is unable to justify or refute the claim of Mr. Freddie Stokely.

Paragraph 10.1, title 4 of the General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies (4 C.F.R. 31.7 (1978)) provides as follows:

"Claims are settled on the basis of the facts as established by the Government agency concerned and by evidence submitted by the claimant. Settlements are founded on a determination of the legal liability of the United States under the factual situation involved as established by the written record. The burden is on the claimants to establish the liability of the United States, and the claimants' right to payment. The settlement of claims is based upon the written record only."

While the burden of proof is to the validity of a claim against the United States, generally is on the person asserting such claim, information concerning its existence is usually found in records maintained by the Government. However, it has been long established that where, as in the present case, the records necessary to justify or refute a claim have been destroyed pursuant to law, the accounting officer of the Government may not give the matter favorable consideration where the claimant has failed to act on his claim for a long period of years. Thus, in cases where there is insufficient information given by a claimant to identify and establish a claim, there is no further action that this Office can take in the matter. See B-191246, April 13, 1978; B-188543, August 2, 1977; B-187523, November 9, 1976; and 31 Comp. Gen. 380 (1952).

Accordingly, the action taken by our Claims Division in this matter is sustained.


Deputy Comptroller General
of the United States