

DECISION



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

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PLM-11
Mr. Forams

FILE: B-195730

DATE: January 11, 1980

MATTER OF: Donald E. Guenther

DIGEST: An Army civilian employee stationed overseas was given erroneous information that he was not entitled to have his deceased wife's remains transported to the United States at Government expense and, therefore, he buried her overseas. Seven years later the employee learns of the mistake and requests the transportation. The request for transportation is not a money claim and is not barred by 31 U.S.C. § 71a as untimely filed. The Army has the authority under 5 U.S.C. § 5742(c) to furnish transportation of the remains or to pay the cost thereof; however, the cost of exhumation must be borne by the employee.

We have been asked to render an advance decision as to whether the [statute of limitations for filing claims] against the Government bars Mr. Donald E. Guenther from having his wife's remains transported from overseas to the United States at Government expense; and, if not so barred, whether he or the Government would be responsible for the cost of exhuming the body. For the reasons to follow, the Government may pay the expense for transporting the remains but may not pay the expense for exhuming the body.

This request for an advance decision was made by the Assistant Secretary of the Army (Manpower and Reserve Affairs) and was assigned Control No. 79-24 by the Per Diem, Travel and Transportation Allowance Committee. DLGB 429

Mr. Guenther, a civilian employee of the Army, was working as a school teacher in Germany during 1972 when his wife passed away. Upon her death, the Army informed Mr. Guenther that he would have to make arrangements for

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her burial at his own expense. Additionally, although Mr. Guenther wanted to have his wife's remains returned to the United States for burial, the Army advised him that transportation of the remains to the United States would have to be at his expense. This fact is verified by an Army form prepared by the Registrar at the Army hospital in Germany prior to release of Mr. Guenther's wife's remains in July 1972. As a result, Mr. Guenther had his wife buried in Germany.

Sometime in 1979, Mr. Guenther was apprised that he was given erroneous information in 1972. As he still desired his wife to be buried in the United States and not Germany, he contacted the Army. The Army recognized that the information had been erroneous and that the deceased could have been transported at no expense to the claimant under the provisions of 5 U.S.C. § 5742(c) (1970) as implemented by 2 Joint Travel Regulations (JTR), para. C5001 (change 53, February 1, 1970). The Army further points out, however, that under the provisions of 31 U.S.C. § 71a (1976), any claim shall be barred unless received in the General Accounting Office within 6 years from the time it accrues. Since Mr. Guenther's wife died more than 6 years ago, the Army questions whether it is barred from furnishing the transportation.

The statutory authority for payment, 5 U.S.C. § 5742(c) (1972), provides:

"(c) When a dependent of an employee dies while residing with the employee performing official duties outside the continental United States or in Alaska or in transit thereto or therefrom, the head of the agency concerned may pay the necessary expenses of transporting the remains to the home of the dependent, or such other place appropriate for interment as is determined by the head of the agency concerned. If practicable, the agency concerned in respect of the deceased may furnish mortuary services and supplies on a reimbursable basis when--

"(1) local commercial mortuary facilities and supplies are not available; or

"(2) the cost of available mortuary facilities and supplies are prohibitive in the opinion of the head of the agency.

Reimbursement for the cost of mortuary services and supplies furnished under this subsection shall be collected and credited to current appropriations available for the payment of these costs."

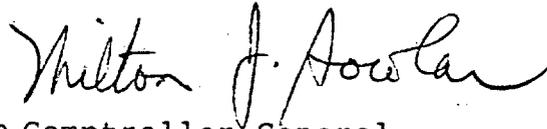
Neither the regulation in force at the time of Mrs. Guenther's death nor the regulations currently in force contain a time limitation applicable to the shipment of remains. Until those remains are shipped either by the United States or by Mr. Guenther, as authorized by paragraph C6064, 2 JTR, no claim is involved. In fact, until the remains are shipped there is no way of determining what the cost will be. If the Army will not transport the remains at this time and Mr. Guenther does so at his expense, he will for the first time have a money claim against the United States. Until those events happen there is no claim and the barring act does not commence running.

Therefore, we find no statutory nor regulatory provision which would preclude Mr. Guenther from claiming his entitlement to have his wife's remains transported at Government expense to the appropriate place for interment. In this regard, we note that Mr. Guenther is still a civilian employee of the Army in Germany and therefore, satisfies the statutory requirements.

While Mr. Guenther may have his wife's remains transported at Government expense, he may not have the remains exhumed or other mortuary services performed at Government expense since 5 U.S.C. § 5742 only provides for transportation at Government expense, and mortuary services only under certain conditions and on a reimbursable basis.

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Accordingly, we would not object to the Army now providing for the transportation of Mr. Guenther's wife's remains as authorized by 2 JTR, para. C6057.

A handwritten signature in cursive script, reading "Milton J. Fowler".

For The Comptroller General
of the United States