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DECISION

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

FILE: B-203204

DATE: July 24, 1981

MATTER OF: Mr. Robert W. Schwab III

DIGEST: Civilian employee of the Navy Department evacuated from Vietnam following the fall of Saigon in 1975 had his claim under 31 U.S.C. 240-243 for personal property lost as a result of the evacuation disallowed by the Navy because it was not timely filed. As to the Comptroller General reporting the matter to Congress as a meritorious claim under the Meritorious Claims Act, 31 U.S.C. 236, that act is construed to apply only to claims which come within the Comptroller General's settlement jurisdiction. Since under 31 U.S.C. 242 the Navy's settlement of such a personal property claim is final and conclusive, the Comptroller General has no jurisdiction in the matter; therefore, the claim is inappropriate for reporting to Congress under the Meritorious Claims Act.

This action is in response to a letter, with enclosures, from Mr. Robert W. Schwab III, requesting further consideration of his entitlement as a civilian employee of the Department of the Navy to be reimbursed for his lost or destroyed personal property incident to his evacuation from Vietnam in 1975, following the fall of Saigon.

Mr. Schwab was employed by the Defense Attache Office from April 4, 1974, through March 15, 1975, compensation for which was paid by the Department of the Navy. From about March 20, 1975, he worked for the Political Affairs Section of the United States Embassy in Saigon not under employment documents but under a purchase order. He apparently remained in that status until the evacuation at the end of April 1975.

In November 1975, Mr. Schwab, through counsel, made claim with the then Claims Division of this Office for a 25-percent post differential, living quarters allowance and return travel expenses incident to his employment with the Navy. Considerable difficulty was encountered in determining Mr. Schwab's entitlement to those items of allowance. Eventually, it was determined that he was entitled to the allowances and on July 26, 1977 (corrected October 12, 1977), payment of those allowances,

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including return travel expenses, was certified as due him incident to his employment by the Department of the Navy from April 4, 1974, through March 15, 1975.

In August 1977 Mr. Schwab filed a claim with the Navy for lost or destroyed personal property which occurred incident to the evacuation from Saigon. That claim was denied by the Navy on the grounds that he had failed to file within the 2-year period after accrual as required by 31 U.S.C. 241(c). That subsection provides specifically that a claim may be allowed only if it is presented in writing within 2 years after it has accrued. Since the property was lost at the evacuation of Saigon in April 1975, and the claim was not presented until August 1977 the Navy advised Mr. Schwab that his claim could not be considered.

Mr. Schwab argues that the 2-year limitation should not be imposed because he submitted his claim shortly after his status as a Navy employee was settled. This is particularly important because his entitlement to return transportation from Saigon to the United States was dependent on his status as a Navy employee. However, although 31 U.S.C. 241(c) provides for an extension of time to submit claims beyond the normal 2 years in the event of war, it does not provide general authority to waive the 2-year time limitation.

Following appeals and reviews of that action within the Department of the Navy, Mr. Schwab submitted his claim to our Office. That claim was the subject of correspondence from our Claims Group, dated June 10, 1980, advising Mr. Schwab that under the provisions of law governing settlement of claims for losses of personal property of Government employees incident to service (31 U.S.C. 240-243), the Secretary of the department concerned is vested with exclusive jurisdiction to settle such claims and that such settlements are final and conclusive. Therefore, Mr. Schwab was advised that there was no action that our Office could take in the matter, and that any appeal of the denial of his claim should be filed with the Navy.

In his recent correspondence to this Office, Mr. Schwab requests that we assist him in securing reimbursement by reporting the matter to Congress for relief under the Meritorious Claims Act of 1928, 31 U.S.C. 236 (1976).

That act provides as follows:

"When there is filed in the General Accounting Office a claim or demand against the United States that may not lawfully be adjusted by the use of an appropriation theretofore made, but which claim or demand in the judgment of the Comptroller General of the United States contains such elements of legal liability or equity as to be deserving of the consideration of the Congress, he shall submit the same to the Congress by a special report containing the material facts and his recommendation thereon."

While the statute does not contain restrictive language as to the types of claims which are reportable to Congress by this Office, we have consistently construed it as applying only to claims of the types which come within the settlement jurisdiction of this Office, but which may not be adjusted and settled due to the lack of appropriations available for that purpose. See 13 Comp. Gen. 406, 408 (1934); B-170252, July 23, 1970; and B-185428, January 29, 1976.

As a general rule all claims against the United States are cognizable by our Office except where jurisdiction over certain types of claims has been specifically delegated elsewhere. In this regard, claims for loss of personal property incident to Government service by military personnel and civilian employees of the United States which may be reimbursed, are reimbursable under the Military Personnel and Civilian Employees Claims Act of 1964, as amended, 31 U.S.C. 240-243 (1976). Pursuant to 31 U.S.C. 241 and the implementing regulations contained in Part 751 of title 32, Code of Federal Regulations, the Secretary of a military department or his designee is authorized to settle personal property loss or damage claims of civilian employees of that department. Under 31 U.S.C. 242, such settlements as are made are "final and conclusive." Thus, this type of claim is one of those for which settlement authority has been delegated elsewhere, and our Office has no jurisdiction to either consider the merits of these claims or review settlements made under those provisions. 47 Comp. Gen. 316 (1967), and 58 Comp. Gen. 291 (1979).

Therefore, since Mr. Schwab's claim is not within our jurisdiction, it is our view that it is not appropriate for

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us to report to the Congress as a meritorious claim under the provisions of 31 U.S.C. 236.

A handwritten signature in cursive script that reads "Milton J. Fowler". The signature is written in dark ink and is positioned above the printed name.

Acting Comptroller General
of the United States