

DECISION

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

124225

FILE: B-214361

DATE: May 22, 1984

MATTER OF: Velia Lenhart

DIGEST:

The widow of a retired military member seeks payment of an amount equal to investment interest she states was lost on the balance of a settlement payment to which she was entitled under the Military Claims Act. She claims that the check that was initially sent to her in payment was improperly drawn due to negligence, and claims the interest she lost from the date she received the first check until the date she received a second check which she was able to negotiate. The claim is denied since there is no authority for such a payment.

This decision is the result of an appeal by Mrs. Velia Lenhart of the action of our Claims Group, which denied her claim for money which she claims was lost due to the delay in receiving the Government's payment to her of a settlement in connection with the death of her husband. Since there is no legal authority to pay this claim, the action of the Claims Group must be sustained.

On February 12, 1982, Mrs. Lenhart agreed to a settlement in the amount of \$100,000 in full satisfaction of her claim against the United States arising from the alleged wrongful death of her husband, Clarence Harvey Lenhart, USN (Retired). Mr. Lenhart died at the Naval Regional Medical Center, Naples, Italy, on November 2, 1980. By the terms of the settlement agreement, which was endorsed by Mrs. Lenhart and her attorney, attorney's fees in the amount of "not more than \$20,000" were to be paid to her attorney out of the proceeds of the settlement.

On June 28, 1982, Mrs. Lenhart's claim for payment under 10 U.S.C. § 2733 was received in this Office from the Department of the Navy. The information received from the Navy Department indicated that, consistent with the provisions of 10 U.S.C. § 2733, the Navy Regional Finance Center, Washington, D.C., had paid Mrs. Lenhart's attorney \$20,000

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in attorney's fees, and that she had received \$5,000.¹ Thus, \$75,000 of the amount of the settlement remained to be paid.

On August 18, 1982, a United States Treasury check in the amount of \$75,000 was issued, payable to Mrs. Lenhart and her attorney. When, on or about August 30, 1982, Mrs. Lenhart received the check, not only had the attorney who represented her in the matter already been paid in full under the terms of the agreement, he was no longer available to endorse the check over to her. Since the check could not be negotiated, Mrs. Lenhart returned it through the Navy to this Office with a request that it be reissued, payable solely to her. On November 18, 1982, she received a new check in the amount of \$75,000.

In essence alleging that payment to her was delayed due to negligent processing and handling of funds, Mrs. Lenhart is now making a claim for interest which she maintains she lost on the \$75,000 at the rate of 12 percent for 80 days, in the total amount of \$2,000 (from August 30, 1982, when she received the first \$75,000 check, until November 18, 1982, when she received the new check).

On September 9, 1983, the Claims Group denied Mrs. Lenhart's claim on the basis that there is no statutory authority for the payment of interest under these circumstances and that no statute prescribes a certain time period within which a Government payment in the nature of that made to Mrs. Lenhart must be received by the claimant. In her appeal, Mrs. Lenhart contends that her claim for interest is based on the fact that the first \$75,000 check she received was improperly issued since it was made payable to her and her attorney, who had already been paid, and because of that error she was deprived of the benefit of the payment until she received the new check.

¹ Under 10 U.S.C. § 2733, a claim such as this may be settled by appropriate military officials in an amount of not more than \$25,000. Claims filed under this act that exceed \$25,000 are payable under 31 U.S.C. § 1304 if the Secretary of the service concerned considers that the claim is meritorious and would otherwise be covered by the act. (See 10 U.S.C. §§ 2733(a) and (d).)

While Mrs. Lenhart couches her claim in terms of negligence on the part of a Government employee, the fact remains that she is claiming a late payment charge or interest on the payment because of the delay regardless of the reason for it,

Claims are settled by this Office on the basis of statutory authority. We are unaware of any authority which obligates the Government to settle claims of this type within a specific period of time. Furthermore, the fact that the check which was issued was made payable jointly to Mrs. Lenhart and the attorney who represented her in this matter does not appear to be unreasonable or negligent although unnecessary.

With regard to the true nature of the claim, it is a well-settled rule that late payment charges or interest may be assessed against the Government only under an express statutory or contractual authorization. See Fitzgerald v. United States, 578 F.2d 435 (D.C. Cir. 1978); John H. Kerr, 61 Comp. Gen. 578 (1982); and 45 Comp. Gen. 169 (1965). Neither 10 U.S.C. § 2733 under which Mrs. Lenhart's original claim was authorized for payment, nor any other statute of which we are aware, provides authority for the payment of interest on that claim.

Thus, while it is unfortunate that a delay was caused by issuing a second check, no basis exists for the payment of Mrs. Lenhart's claim. Accordingly, the denial of the Claims Group is sustained.

Milton J. Fowler
for Comptroller General
of the United States