

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

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B-190495

DEC 29 1977

The Honorable Peter W. Rodino, Jr.
Chairman, Committee on the Judiciary
House of Representatives

Dear Mr. Chairman:

We refer to your letter of October 19, 1977, requesting our views on H.R. 9502, 95th Congress, 1st Session, a bill, "For the relief of ."

The bill would direct the Secretary of the Treasury to pay to the sum of \$5,566 in full settlement of all of his claims against the United States for services performed as a civil engineer with the United States Army during World War II, while on leave without right of salary from the Polish Army, in connection with repairs and reconstruction in the ports of Bremen and Bremerhaven.

Mr. claim was disallowed by this Office in Settlement Certificate Z-1193030, dated October 30, 1952 (copy enclosed). The disallowance was based primarily on a lack of evidence. Mr. originally asserted his claim in a letter to the Adjutant General of the Army dated January 8, 1951 (copy enclosed). In that letter Mr. referred to nine exhibits and 40 enclosures. None of the originals of these referenced documents were ever received by this Office. Prior to the issuance of our Settlement Certificate, the only documentation in our file in support of Mr. claim were copies, which were certified as true by Mr. himself, of extracts of some of the exhibits referred to in his original claim. Our file consists mainly of letters from various activities of the Army attempting to locate the missing documents or to establish independent substantiation of Mr. claim. Neither effort was successful prior to our disallowance of the claim.

Following our disallowance, Mr. continued his efforts to locate the missing documentation, without success. To the best of our knowledge, the missing documents have never been located,

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all that remain are copies of some of the documents, most of which have been certified as true copies by Mr. himself.

Following our disallowance of Mr. claim and the inability of all parties to locate the missing documentation, the Adjutant General of the Army, in a letter dated September 27, 1954 (copy enclosed), requested that Lt. Col. , USAR, who was claimed by Mr. to have been his commanding officer, to provide whatever information he might have concerning Mr. claim. Lt. Col. by letter of October 5, 1954 (copy enclosed, the original is being retained in our files), advised the Adjutant General, in essence, that Mr. claim was correct and possibly smaller than he deserved. Because no reconsideration of his claim had been requested by Mr. Lt. Col. letter was placed in our file without further action, when it was received from the Army in January 1955,

While preparing our report on this bill, we learned that Lt. Col. was still in this area. On November 22, 1977, he was interviewed by Mr. of our Office of General Counsel, at Lt. Col. office, Resources Engineering Inc., 1701 16th Street, N.W., Suite 104 (telephone 234-2200). Lt. Col. had retained a file on Mr. claim. This file consisted of copies of the documents submitted with Mr. claim that Mr. had forwarded to Lt. Col. . As with our file, most of the documents were certified as true copies by Mr. himself, but several significant ones were certified as true copies by another, apparently disinterested, officer.

From our review of the documents in our files, the documents in Lt. Col. file, and Lt. Col. own recollection of the events, we have, to a limited extent, been able to reconstruct the outline of Mr. employment with the Army in Bremen and Bremerhaven. According to Lt. Col. , at about the time the war ended, Mr. , then known as 1st Lt. , was serving with what was left of the Polish Army and Government in Paris. He apparently functioned as a liaison officer with the Headquarters of the United States Forces, European Theater, in Paris. We cannot determine how Mr. left that post, but he eventually became attached to the Bremen Port Command as a civil engineer. One of the documents we obtained from Lt. Col. is a copy of an Extract from Special Order Number 52, dated March 5, 1946

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(copy enclosed), by Headquarters Bremen Port Command, U.S. Army, assigning 1st Lt. [redacted] to the Bremen Port Command as a civil engineer. Another document, a copy of which was obtained from Lt. Col. [redacted] is an Extract of Headquarters Bremen Port Command, Special Order Number 86, dated April 15, 1946 (copy enclosed), transferring Mr. [redacted] from the Bremen Port Command to the 1265th Engineer Combat Battalion, which was under the command of Lt. Col. [redacted]. We also obtained from Lt. Col. [redacted] a copy of a letter from Headquarters, U.S. Forces, European Theater to Headquarters, 1265th Engineer Combat Battalion, dated July 1, 1946 (copy enclosed), which stated that Mr. [redacted] had been to the Headquarters, U.S. Forces, seeking payment for services rendered. Headquarters, U.S. Forces, requested a clarification of Mr. [redacted] status. In answer to this is a letter in our file, dated July 13, 1946, from the Commanding Officer of the 1265th Engineer Combat Battalion, Lt. Col. [redacted] (copy enclosed), requesting that Mr. [redacted] be placed under contract as a civil engineer. While this letter was certified to be a true copy by Mr. [redacted], Lt. Col. [redacted] reviewed it and stated that it was correct.

We have been unable to reconstruct the documentary record beyond that point, but Lt. Col. [redacted] was able to provide further information. He stated that Mr. [redacted] was never given an appropriate contract. Lt. Col. [redacted] attributes this to the turmoil existing at that time in that area. He stated that no salary was ever fixed for Mr. [redacted] because that would have been done during the negotiation of the contract. He also stated that, to the best of his knowledge, Mr. [redacted] was never paid for the work he performed. Finally, Lt. Col. [redacted] very strongly restated his position that Mr. [redacted] was entitled to much more than the amount contained in the proposed relief bill. He again stated his feeling that Mr. [redacted] was an outstanding engineer who had rendered valuable services to the United States.

In light of the new information we have uncovered, we have reviewed this entire case to determine whether the record would now support payment of Mr. [redacted] claim. Regrettably, we conclude that it does not. Enclosed is a copy of the computation of the amount of Mr. [redacted] claim that was submitted with the original claim in January 1951. As you can see, the amount set out in the proposed bill is precisely the same as the amount claimed by Mr. [redacted] 27 years ago. Unfortunately the computation is based upon a salary arbitrarily chosen by Mr. [redacted]. We cannot now

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determine that the salary selected by Mr. was appropriate under the circumstances, or that it even approximates what he would have been paid if he had been placed under contract as had been requested by Lt. Col. .

In summary, we believe that Mr. performed the services that he alleges he performed, but, since we cannot determine the amount he should have been paid, we cannot legally pay his claim under our statutory authority. Although we generally oppose the enactment of private relief legislation because such legislation frequently leads to disparate treatment of similarly situated individuals, we believe that the equitable considerations present here justify the enactment of H.R. 9502 for the relief of

Sincerely yours,

R. F. KELLNER

Acting Comptroller General
of the United States

Enclosures

PAYMENTS

Absence or unenforceability of contracts
Personal services

CONTRACTS

Implied
Payment basis
Lacking
Relief legislation recommended

OFFICERS AND EMPLOYEES

Contract employees
Engineer from Polish army performed
services with U.S. Army after WWII
Relief legislation recommended

LEGISLATION

Private
Civilian personnel
Relief
Extenuating circumstances