

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

B-139028

JAN 4 1973

Canton, Ohio 44710

Dear Mrs. :

Further reference is made to your letter of November 17, 1971, concerning your claim for the remaining one-half share of the pay and allowances reserved for the father of your late son, as of June 25, 1953, the date of receipt of evidence of his death in Korea while serving as a sergeant first class, United States Army.

You say that the decedent's father, _____, died in Long Beach, California, on October 18, 1971. In this connection, there has been received here a communication dated January 3, 1972, from the Stark County Soldiers Relief Commission, Veterans Service Center, Canton, Ohio, enclosing a certified true copy of a death certificate showing that _____ died in Long Beach, California, on October 18, 1971. As a result of Mr. _____ death, you say you wish to apply for the remaining one-half share of your son's pay reserved for the father.

Your claim was the subject of numerous decisions to you dated April 29, 1959, June 29, 1960, February 15, 1961, March 22, 1966, and April 19, 1966, B-139028. You were advised in those decisions that the act of February 25, 1946, 60 Stat. 30, expressly provided that, where no demand is presented by a duly appointed legal representative of the estate and the decedent is not survived by a widow or descendant, the accounting officer may allow the amount found due "to the father and mother in equal parts" or "if either the father or mother be dead, then to the one surviving." You were also advised that the father's share could not legally be allowed to you, as mother, while he was alive.

In the above decisions we also invited your attention to the provisions of the barring act (31 U.S.C. 71a) and said that if a claim by a legal representative of your son's estate was not received here by June 24, 1963, we would be precluded from considering such claim. Finally, in decision of April 19, 1966, we advised you that since a claim from a legal representative was not received here by June 24, 1963, such a claim would now be barred.

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The act of October 9, 1940, ch. 788, 54 Stat. 1061, 31 U.S.C. 71a, provides that every claim or demand against the United States cognizable by the General Accounting Office--

"* * * shall be forever barred unless such claim, bearing the signature and address of the claimant or an authorized agent or attorney, shall be received in said office within ten full years after the date such claim first accrued. * * *"

Under the 1946 act cited above, your son's father would have been entitled to the remaining one-half of the amount due your son if he had filed a timely claim. That claim, as did your claim, accrued on June 25, 1953, when evidence sufficient to establish your son's death was received by the Secretary of the Army. Since the father did not make a claim within 10 full years after that date (June 24, 1963), his claim became barred from consideration by virtue of the 1940 act.

Your claim for the father's share could accrue only upon his death since you had no right to his share while he remained alive. Since at the time of his death on October 18, 1971, his claim was barred, your claim for his share also must be considered as barred under the act of October 9, 1940.

Accordingly, we are now without authority to take any further action on your claim.

Very truly yours,

R.F.KELLER

(Deputy Comptroller General
of the United States