

DECISION

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

*Easterwood
24641*

FILE: B-209615**DATE:** March 28, 1983**MATTER OF:** Suzanne C. Cramond

DIGEST: The Secretary of the Army denied a deceased civilian employee's representative's claim under 10 U.S.C. § 2733 for wrongful death damages allegedly caused by malpractice of Army medical officials. As to the Comptroller General reporting the matter to Congress as a meritorious claim under 31 U.S.C. § 3702(d) (formerly 31 U.S.C. § 236), that provision is construed to apply only to claims which fall within GAO's settlement authority. Since, under 10 U.S.C. §§ 2733 and 2735, the Army's settlement of a claim for damages is final and conclusive, GAO has no authority in the matter and the claim is inappropriate for reporting to Congress under the Act.

This action is in response to a letter, with supporting brief, from Mrs. Suzanne C. Cramond, through her counsel, who is the representative of Mr. John Cramond, Jr., a deceased former employee of the Air Force who had retired on disability. Mrs. Cramond alleges that malpractice of Government officials who were treating Mr. Cramond while he was working for the Air Force in Germany, and their abandonment of his treatment after his disability retirement, proximately caused her husband's death. She requests that we assist in securing damages for his wrongful death by reporting the matter to Congress for relief under the Meritorious Claims Act of 1928, now codified at 31 U.S.C. § 3702(d) (formerly 31 U.S.C. § 236). The claim is not appropriate for us to consider for submission to the Congress.

The claim arose under the following circumstances. Mr. John Cramond, a civilian working for the Air Force at the Pentagon, began experiencing a series of seizures in late 1971 and early 1972. He was transferred and moved with his wife Suzanne and their children to Wiesbaden, Germany, in July 1972, where he continued having seizures. These seizures were treated by medical personnel

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at various service hospitals in Germany, including the U.S. Army Hospital at Landstuhl. In May of 1974 surgery was performed on Mr. Cramond at the U.S. Air Force Hospital at Wiesbaden to remove a brain tumor. However, he continued to have seizures after the operation and was treated at the Landstuhl Army Hospital. He was retired for disability in Germany in November 1974. In August 1975 Mr. Cramond, still in Germany, fell while apparently having a seizure, hit his head on a curb, and died shortly thereafter.

Mrs. Cramond, as representative of her deceased husband, filed a claim under 10 U.S.C. § 2733 with the Army for the surviving family. She alleged negligent treatment of Mr. Cramond's seizures by the medical personnel in the Landstuhl Army Hospital, including negligent follow-up care after the operation and after Mr. Cramond's disability retirement. She also alleged that this negligent treatment and follow-up care proximately caused his seizure in 1975 which resulted in the fall and ensuing death. The claim was denied by the Army Claims Service. The denial was appealed to the Secretary of the Army who, by delegation, affirmed the initial denial and ruled that Mr. Cramond's death was not a proximate result of treatment received or follow-up care by medical personnel at Landstuhl. Subsequently, the claimant submitted the matter to us requesting that we report it to Congress as a meritorious claim.

The Meritorious Claims Act, now 31 U.S.C. § 3702(d), provides as follows:

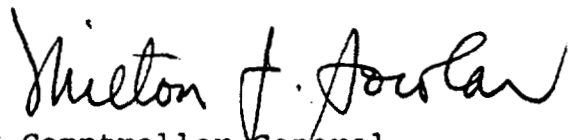
"The Comptroller General shall report to Congress on a claim against the Government that is timely presented under this section that may not be adjusted by using an existing appropriation, and that the Comptroller General believes Congress should consider for legal or equitable reasons. The report shall include recommendations of the Comptroller General."

There is a question of whether this claim was timely presented, but that question need not be resolved because there is a more fundamental difficulty with it. We have consistently construed the Act as applying only to claims of the types which fall within our settlement authority,

but which may not be adjusted and settled regardless of the equities involved, because agency appropriations are not available to pay a claim for which the United States is not legally liable. E.g., 34 Comp. Gen. 490 (1955); Matter of Schwab, B-203204, July 24, 1981.

Claims against the United States are cognizable by our Office except where settlement authority has been specifically delegated to some other agency. 31 U.S.C. § 3702(a). In this regard, claims for damages against the United States caused by the negligent or wrongful act or omission of a Government employee while acting within the scope of his office or employment, are considered and adjusted under the Federal Tort Claims Act, 28 U.S.C. § 2672 (1976), or the Military Claims Act, 10 U.S.C. § 2733 (1976). Under the provisions of both Acts, the head of the particular Federal agency involved or his designee is authorized to consider and settle any tort claim against that agency. Settlements made under those Acts are "final and conclusive." 10 U.S.C. § 2735, 28 U.S.C. § 2672. Therefore, this type of claim is one of those for which settlement authority has been delegated elsewhere, and our Office has no authority to either consider the merits of this claim or review settlements made under those provisions.

Accordingly, since Mrs. Cramond's claim is not within the settlement authority of our Office, it is not appropriate for us to consider it for submission to the Congress as a meritorious claim under the provisions of 31 U.S.C. § 3702(d).



Acting Comptroller General
of the United States