



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Xie Qianhao
File: B-238482
Date: July 5, 1991

DIGEST

Settlement by the Claims Group that 31 U.S.C. § 3702(b) barred claim by son for arrears of military retired pay that were owed but never paid to his father, a retired Navy member living in China, and survivor's benefits, if any, owed his spouse is reversed. The claim is for monies withheld in accordance with 31 U.S.C. § 3329 which authorizes the Secretary of the Treasury to hold monies in trust if the Secretary determines that the payee lives in a country where it is unlikely that he or she will receive checks from the United States or be able to negotiate them for full value. Claims to recover monies held in trust by the government are not barred under 31 U.S.C. § 3702(b).

DECISION

We have been asked to reconsider the claim of Xie Qianhao for arrears of military retired pay that were owed but never paid to his father, Ah Doo, a retired Navy member, and survivor benefits, if any, owed Ah Doo's spouse. Our Claims Group denied Xie Qianhao's claim in 1984 on the grounds that consideration of the claim was barred by 31 U.S.C. § 3702(b). For the reasons presented below, we conclude that consideration of this claim is not barred. Accordingly, the claim is remanded to the Navy for settlement after ascertaining what amounts of retired military pay owed to Ah Doo and survivor's benefits, if any, owed his spouse were withheld and whether the claimant, Xie Qianhao, is the proper beneficiary that is legally entitled to receive such amounts.

BACKGROUND

Mr. Ah Doo served in the United States Navy from 1905 until 1925. Upon his retirement, he received monthly retired pay from the Navy through the American Consulate in Shanghai, China. When relations with the United States and China were severed in 1949, the Navy discontinued sending his retired pay to the Consulate. He died in 1965, and his wife, Nin Ah Doo, died in 1975. Diplomatic relations were restored in 1979.

Subsequently, in July 1982, Xie Qianhao, Ah Doo's son, filed a claim with the Navy for the arrears of his father's retired pay and any survivor's benefits to which Ah Doo's spouse (Xie Qianhao's mother) was entitled after Ah Doo died.^{1/}

By letter, dated July 26, 1984 (received on August 7, 1984), the Navy submitted the claim to our Claims Group for approval and certification prior to payment. The Navy advised us that the claim was subject to doubt under 31 U.S.C. § 3702(b). On August 10, 1984, the Claims Group denied the claim because it was not filed with the General Accounting Office within 6 years of the date on which it had accrued and, therefore, was barred under 31 U.S.C. § 3702(b). Our Office has now been requested^{2/} to reconsider the determination by the Claims Group that the claim is barred.

Analysis

Under 31 U.S.C. § 3702(b), a claim against the government cannot ordinarily be considered unless the claim is received by the Comptroller General within 6 years of the date it accrues. See 64 Comp. Gen. 155 (1964). Presumably, Xie Qianhao's claim for arrears of retired pay due his father accrued in February 1965, when his father died.^{3/} Thus, our Claims Group determined that the claim it received in August 1984 was barred by 31 U.S.C. § 3702(b). We disagree.

Under 31 U.S.C. § 3329, the Secretary of the Treasury is required to prohibit any checks drawn on public money from being sent to an individual payee in a foreign country if the Secretary determines that the postal, transportation, banking, or other conditions in that country do not reasonably ensure that the payee will receive the check and be able to negotiate it for full value. The statute further provides that the amount of any withheld check be deposited into a special deposit account, designated "Secretary of the Treasury,

^{1/} See letters from Xie Qianhao to Navy Finance Center dated July 17, 1982 and July 16, 1984.

^{2/} See letter dated December 20, 1989 from Representative Larry A. Hopkins, with enclosures from James W. Gardner, attorney on behalf of Xie Gong-Yuan, the son of the claimant Xie Qianhao (and the grandson of Ah Doo).

^{3/} Xie Qianhao is also claiming any survivor's benefits to which his mother was entitled after her husband died. The claim on behalf of Ah Doo's spouse would have accrued in March 1975 when she died.

Proceeds of Withheld Foreign Checks." 31 U.S.C. § 3329(b)(4). The Secretary is authorized to pay amounts deposited in this special deposit fund to a claimant who satisfies the Secretary that he or she is entitled to such amounts, provided the Secretary is reasonably assured that the claimant will receive and be able to negotiate a check drawn on the fund.

After diplomatic relations were severed between China and the United States in 1949, China was added to the list of countries to which the mailing of government checks was restricted. See 31 C.F.R. § 211 (1952) and Treasury Department Circular No. 655, Supplement 8, April 17, 1951. China was not removed from the restricted list until August 1979 after diplomatic relations with China were restored. See 44 Fed. Reg. 51567 (1979). It was because of China's inclusion on the "restricted" countries list established by the Secretary of the Treasury as authorized by 31 U.S.C. § 3329 that the Navy stopped sending retired pay to Ah Doo.

Our Office has held that 31 U.S.C. § 3702 does not apply to a claim to recover moneys that have been deposited in a trust fund. See 66 Comp. Gen. 40 (1986) and 42 Comp. Gen. 622 (1963). Furthermore, our Office has held repeatedly that the special deposit account for the proceeds of withheld foreign checks should be regarded as a trust fund established for the benefit and protection of the intended payees of the funds deposited in the special account. See B-155963, Mar. 19, 1965 and B-144046, Oct. 31, 1960. Specifically, we have held that like other trust funds, ". . . there is no statute of limitations which would run against a claim of a person for whom the . . . [special deposit trust fund] was created." 55 Comp. Gen. 1234, 1236 (1976).

Thus, the prohibition in 31 U.S.C. § 3702 would not bar a claim by Ah Doo's beneficiaries to recover amounts paid into the special deposit trust fund on behalf of Ah Doo. We have been advised informally by officials at the Navy Finance Center, however, that after China was placed on the restricted countries list, the Navy Finance Center stopped writing checks payable to payees in China. Therefore, it is doubtful whether any funds payable to Ah Doo were ever deposited in the withheld foreign check account. Nevertheless, we believe that the retired military pay owed Ah Doo that was withheld because of China's placement on the restricted countries list has been held in trust by the United States. Accordingly, a claim by Ah Doo's beneficiary to recover such amounts would not be barred by 31 U.S.C. § 3702(b).

In lieu of writing checks payable to individuals in the restricted countries designated by the Secretary of the Treasury (and set forth at 31 C.F.R. § 211) and depositing them in the special deposit trust fund authorized by 31 U.S.C.

§ 3329, the Treasury Department has adopted an alternative procedure that is less burdensome administratively but which accomplishes the same objective as the statute. Under the alternative procedure, which is set forth in section 2085 of Part 4 of Volume 1 of the Treasury Fiscal Requirements Manual for Guidance of Departments and Agencies, agencies are directed not to draw checks or warrants intended for deliveries in restricted countries:

"In place of drawing a check or warrant which would be withheld under 31 C.F.R. § 211, the drawer agency will withhold payment and will establish the liability on its books."

Section 2085.20 further provides that claims for "proceeds withheld should be processed by the administrative agency responsible for originally authorizing issuance of those proceeds." Upon approval of a claim for withheld proceeds, agencies are directed to pay the claim by issuing a check and decreasing the respective liability on the agency's books. Section 2085.20a. For proceeds of withheld checks that had been deposited and which remained in the withheld foreign checks deposit account, agencies are directed to submit requests for payment, with the agency's recommendation, to the Department of the Treasury. Section 2085.20b.

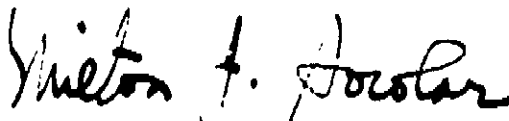
Although formal regulations establishing this alternative procedure for dealing with checks payable to individuals living in countries on the restricted list were not adopted until 1964, it appears that the Navy was following this procedure at the time China was placed on the restricted countries list in 1951.^{4/} This would explain why the Navy stopped writing checks for payees in China and depositing them in the withheld foreign checks trust fund after China was designated a restricted country. In any event, whether the retired military pay to which Ah Doo was entitled, and which he never received, was deposited in the proceeds of withheld foreign checks account authorized by 31 U.S.C § 3329 or was simply withheld by the Navy on its books, we believe that all such amounts that were withheld because of China's designation as a restricted country have been held in trust by the United States on behalf of and for the protection of Ah Doo or his lawful beneficiary.

As explained earlier, a claim to recover amounts deposited in the trust fund authorized by 31 U.S.C. § 3329 would not be barred by 31 U.S.C. § 3702(b). In our view, the right of a claimant to recover money that the government is required by

^{4/} See Treasury Department Circular No. 655, revised November 14, 1964.

law to hold in trust for the claimant's benefit cannot be diminished because the government adopts an alternative procedure, as a matter of administrative convenience, and does not actually deposit any funds into a trust fund. Thus, the claim by Ah Doo's son, Xie Qianhao, is not barred by 31 U.S.C. § 3702(b).

The action by our Claims Group which we are reversing i., this decision was in response to a request from the Navy Finance Center for the Comptroller General to certify the claim before the Navy would consider paying it. Accordingly, we hereby remand this claim to the Navy for settlement. The Navy should ascertain what amounts of retired military pay owed to Ah Doo and survivor's benefits, if any, owed his spouse after his death were withheld because of China's designation as a restricted country under 31 U.S.C. § 3329. Also, the Navy must determine whether the claimant, Xie Qianhao, has demonstrated that he is the proper beneficiary that is legally entitled to receive such amounts. In addition, in accordance with section 2085.20 of Part 4, of Volume I of the Treasury Fiscal Requirements Manual, the Navy should ascertain whether amounts withheld from Ah Doo and his spouse were deposited in the proceeds of withheld foreign checks account in the Treasury or, alternatively, were (or should have been) recorded as a liability on the Navy's "books." Payment of the claim should be processed accordingly.5/

for 
Comptroller General
of the United States

5/ In either event, we note that there does not appear to be any basis for paying interest on this claim under 31 U.S.C. § 3329 since the statute does not provide for the payment of interest on amounts held in trust thereunder.