

DECISION



THE COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D. C. 20548

*action withdrawn, see memo*

~~General Atkinson, D.C. No. 4197, 10/19/77,  
(A-77462, B-105013, May 16, 1977)~~

FILE: E-102219

DATE:

OCT 23 1974 674 MS 619a

MATTER OF:

Charles E. Chaudoin v. Clarence E. Atkinson,  
U.S.D.C. D.Delaware, Civil Action No. 4197. Avail-  
ability of funds for payment of settlement.

DIGEST:

Appropriated funds under 31 U.S.C. 724a or otherwise are not available for settlement where United States Court of Appeals for the Third Circuit reversed District Court's grant of defendant's motion for summary judgment in action seeking review of order of General Atkinson, Delaware Adjutant General, discharging a National Guard technician, and remanded the case to the District Court with directions to enter a judgment against General Atkinson, to grant plaintiff the injunctive and mandatory relief sought and award damages in such amount or amounts as justice may require.

This decision is rendered in response to a request from the Department of Justice for our determination as to whether any funds appropriated by Congress are available for payment of a possible settlement in the case of Charles E. Chaudoin v. Clarence E. Atkinson, U.S.D.C. D. Delaware, Civil Action No. 4197.

On April 10, 1974, the United States Court of Appeals for the Third Circuit reversed a decision in the above-entitled case which concerns the right of a civilian technician formerly employed by the Delaware National Guard to reinstatement to a position from which he had been discharged and to payment of monetary damages for the loss he suffered as a result of the discharge.

The National Guard Technicians Act of 1968, 32 U.S.C. § 7094 (1970), authorizes the employment of technicians by the National Guard who also are members of the National Guard. Such technicians are employed and administered by the adjutant general and may be separated for cause by the adjutant general concerned. They are employees of the United States.

It appears from the facts stated in the decision of the Court of Appeals, that the employee, Charles E. Chaudoin, was dismissed from his position as a civilian administrative supply technician of the Delaware National Guard by order of General Clarence E. Atkinson, Adjutant General of the Delaware National Guard.

ra

768390 / 187568

1-32219

for alleged failure to obey an order to participate in a firing squad for a military funeral. Mr. Chaudoin, after objecting to the order, appeared at the appointed time, in uniform, and agreed to comply with the order provided it was given in writing. However, he expressed an intention to file a grievance over the matter. Mr. Chaudoin's supervisor, Captain Miklasiewicz of the National Guard, agreed to give the order in writing and informed his superior, Colonel Johnson, of the incident. The Colonel then instructed the Captain that Mr. Chaudoin had been replaced as a member of the detail and should not be permitted to participate in it.

Mr. Chaudoin's immediate superiors, Captain Miklasiewicz and Colonel Johnson recommended that, as a result of the incident, Mr. Chaudoin should be given an official reprimand and placed on leave without pay for 3 days. The Adjutant General of the Delaware National Guard, General Atkinson, overruled the recommendation and discharged Chaudoin summarily. The General's order was then considered by a Technician Hearing Committee, convened in accordance with National Guard regulations, which decided that Chaudoin had been treated with undue severity. The Committee recommended that Chaudoin be reinstated and be awarded retroactive status and other accumulated credits to the effective date of his removal except that the retroactive pay and credits would not include the pay for 3 days. The Adjutant General ignored the Committee recommendation, and without specifying any reason affirmed his original discharge order.

The plaintiff requested the United States District Court to order his reinstatement and that he be awarded compensation and damage in the amount of \$125,000, attorney fees, interest and costs. The District Court granted summary judgment for summary judgment filed by General Atkinson. The plaintiff

On appeal, the Court of Appeals for the Third Circuit concluded that the discharge order of the Adjutant General was not a lawful order and was therefore null and void ab initio and without legal effect. The judgment was reversed and the case remanded to the District Court with directions to enter a judgment against General Atkinson, to grant the injunctive and mandatory relief sought by Chaudoin and to award him damages in such amount or amounts as justice may require."

Pending final judgment on the case in the District Court, the Department of Justice is considering settlement and the payment of damages to Chaudoin based on the decision in the Court of Appeals. Our opinion is requested as to whether any funds are available for payment of a settlement to Chaudoin.

31 U.S.C. 724 provides, in pertinent part, as follows:

"§ 724a. Appropriations for payment of judgments and compromise settlements against the United States.

"There are appropriated, out of any money in the Treasury not otherwise appropriated, and out of the postal revenues, respectively, such sums as may on and after July 27, 1956 be necessary for the payment, not otherwise provided for, as certified by the Comptroller General, of final judgments, awards, and compromise settlements (not in excess of \$100,000, \* \* \* in any one case) which are payable in accordance with the terms of sections 2414, 2517, 2672, or 2677 of Title 28, together with such interest and costs as may be specified in such judgments or otherwise authorized by Law \* \* \*."

28 U.S.C. 2414 provides, in pertinent part, as follows:

"§ 2414. Payment of judgments and compromise settlements.

"Payment of final judgments rendered by a district court against the United States shall be made on settlements by the General Accounting Office. \* \* \*

"Except as otherwise provided by law, compromise settlements of claims referred to the Attorney General for defense of imminent litigation or suits against the United States, or against its agencies or officials upon obligations or liabilities of the United States, made by the Attorney General or any person authorized by him, shall be settled and paid in a manner similar to judgments in like causes and appropriations or funds available for the payment of such judgments are hereby made available for the payment of such compromise settlements." (Underscoring supplied.)

The United States is not named as a defendant in the present case and, although the cause of action arose from an order issued by an agent of the Government, the judgment is against the individual who issued the order. Under the circumstances the appropriation provided by 31 U.S.C. 724a would not be available for payment of a judgment. See 15 Comp. Gen. 933 (1936). Cf. 31 Comp. Gen. 246 (1952); 44 *Id.* 312 (1964), and cases therein cited.

As to the possible availability of funds from any other source, "It is well-settled that the appropriations or funds provided for regular governmental operations or activities, out of which a cause of action arises, are not available to pay judgments of courts in the absence of specific authority therefor." 40 Comp. Gen. 95 (1960), and cases therein cited. We do not know of any such authority which would be applicable in this case.

1-182219

Inasmuch as no authority has been found to exist for payment of a final judgment in this case the same rationale applies to the availability of funds for a settlement. Accordingly, it is our determination that no funds are available for payment of a settlement.

MILTON SOCOLAR  
Acting Comptroller General  
of the United States

SECRETARY GENERAL  
GENERAL INVESTIGATIVE  
DIVISION

UNITED STATES  
DEPARTMENT OF JUSTICE  
GENERAL INVESTIGATIVE  
DIVISION

UNITED STATES  
DEPARTMENT OF JUSTICE  
GENERAL INVESTIGATIVE  
DIVISION