

DECISION

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

FILE: B-186091

DATE:

31
AUG 10 1976

MATTER OF: Ruby M. Rouss - Family Separation Allowance

98709

DIGEST: Following the ruling in Frontiero v. Richardson, 411 U.S. 677 (1973), female Army member who was honorably discharged May 1, 1963, claims retroactive entitlements on account of her civilian husband from January 1958 to May 1, 1963. This claim is subject to the 10-year limitation of the act of October 9, 1940, 31 U.S.C. Sec. 71a but under the Soldiers' and Sailors' Civil Relief Act of 1940, periods of active military service are excluded in computing any period of limitations. Since the member retired on May 1, 1963, and since her claim was not presented until January 1974, it is barred. The argument that claim did not accrue to the member until the decision in Frontiero was rendered is not valid.

This action is in response to a letter dated February 18, 1976, from Ruby M. Rouss, SFC, USA, Retired, requesting reconsideration of a settlement by our Transportation and Claims Division (now Claims Division) dated November 26, 1974, which disallowed her claim for rental allowance.

The record indicates that as a result of the ruling of the United States Supreme Court in the case of Frontiero v. Richardson, 411 U.S. 677 (1973), the U.S. Army Finance Support Agency in a memorandum dated December 12, 1973, advised female members and former members that they might claim entitlements equal to those afforded male members, e.g., dependency allowances without regard to in-fact dependency of their civilian husbands.

In response to that memorandum, by letter dated January 25, 1974, Ms. Rouss requested basic allowance for quarters as well as station housing allowance, cost-of-living allowance, and dislocation allowances, as applicable, from January 1958 to May 1, 1963, during which time she and her husband were not furnished Government quarters. The member also indicates that she was a member of the military service from January 23, 1943, to May 1, 1963, at which time she received an honorable discharge.

B-186091

On May 21, 1974, the Transportation and Claims Division of this Office indicated to the member that her claim was barred by the act of October 9, 1940, 54 Stat. 1061, since it was first received in the General Accounting Office more than 10 years after it first accrued.

The member argued, through her attorney by letter dated October 15, 1974, that her claim accrued on either the date of the Frontiero decision, May 14, 1973, or on the date of the decision by the Comptroller General of the United States, B-178979, August 31, 1973, which answered certain questions with respect to retroactive pay which arose as a result of the Frontiero decision.

A further settlement of the Transportation and Claims Division, dated November 26, 1974, indicated that the member's claim for underpayment of pay and/or allowances arose on a day-to-day basis and that unless she had filed a claim with this Office within 10 years of each such underpayment, the limitation in the act of October 9, 1940, applied even though the validity of such claims was not recognized by the Government until 1973.

In the letter dated February 18, 1976, the previous arguments are reiterated. The member further contends that the Department of the Army did not notify her of the possibility of retroactive entitlement to pay and allowances as a result of the Frontiero decision until December 12, 1973, so that she was precluded from filing a claim until January 1974. She contends that if she had been notified sooner by the Department of the Army, her claim might have reached this Office by the fall of 1973 and, as a result, her claim might not have been barred by the statute of limitations.

The act of October 9, 1940, ch. 788, 54 Stat. 1061, 31 U.S.C. § 71a (1970) provides in pertinent part that every claim or demand against the United States cognizable by the General Accounting Office (with certain exceptions not applicable here) must be received in the General Accounting Office within 10 full years after the date it first accrues, or it is forever barred. The limitation period was reduced to 6 years by the act of January 2, 1975, Pub. L. 93-604, 88 Stat. 1965. In that connection it is noted that section 205 of the Soldiers' and

B-186091

Sailors' Civil Relief Act of 1940, October 17, 1940, ch. 888, 54 Stat. 1181, as amended, 50 U.S.C. App § 525 (1970), excludes periods of active military service in computing any period of limitations provided by the law for filing claims against the Government. Thus, the limitation in 31 U.S.C. § 71a begins to run against service members on the day of separation from the service with respect to claims which arose during military service.

The statute of limitations applicable to claims brought before this Office like the statutes of limitations applicable to actions brought in various courts must be applied on the basis of the date action thereon could have been brought regardless of the fact that the Government at the time did not admit liability. See Ball v. United States, 133 Ct. Cl. 841 (1956) and cases cited therein. Neither the court in Frontiero nor this Office in applying that decision created a new entitlement for female members of the uniformed services. Those actions merely recognized the existence of certain entitlements which the Government previously had not recognized. Accordingly the dates of those actions are not the dates on which a cause of action accrues.

The memorandum of the U.S. Army Finance Support Agency of December 12, 1973, which was furnished female members and former female members of the Army, did not contain information with regard to the applicability of the statute of limitations, although the applicability of that act was recognized in the decision of August 31, 1973, supra. There is no basis to hold that that memorandum revived claims already barred by the 10-year statute of limitations. Since Ms. Rouss retired on May 1, 1963, any claim for pay based on her active service was barred if not brought prior to May 1, 1973. Although that date was prior to the date of the decision in the Frontiero case, under the rules of law discussed above, the claim is nevertheless barred.

R.F.KELLER

Deputy) Comptroller General
of the United States