



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Augusto A. Dumlao - Claim for Death Gratuity -  
Barred by Statute of Limitations

**File:** B-227583

**Date:** April 13, 1988

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### DIGEST

Under the Act of October 9, 1940, 54 Stat. 1061, as amended, 31 U.S.C. § 3702(b) (1986), every claim or demand against the United States cognizable by the General Accounting Office must be received in that Office within 6 years from the date it accrued or be barred from consideration. Under that provision of law, as a condition precedent to a claimant's right to have his claim considered by the General Accounting Office, his claim must have been received in this Office within the 6-year period. Accordingly, a claim for a death gratuity which arose out of a Naval Reserve member's death during World War II, which first accrued in 1945 and was filed in the General Accounting Office in 1987, is barred from consideration.

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### DECISION

Mr. Augusto A. Dumlao requests reconsideration of our Claims Group's denial of his claim for payment of an allowance believed due as a result of the death of his brother while serving on active duty as a member of the United States Naval Reserve during World War II. The denial is sustained.

### BACKGROUND

Mr. Augusto A. Dumlao filed a claim with the Department of the Navy for a death gratuity arising out of the death of his brother, Delfin Dumlao, who died January 8, 1944, while serving on active duty as an enlisted member of the Naval Reserve. His first claim letter dated November 23, 1986, was administratively denied by the Navy on January 16, 1987, since it appeared to be barred by the statute of limitations. As a result of subsequent correspondence from Mr. Dumlao, the Navy referred the claim to our Claims Group. It was first received in this Office on March 16, 1987.

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The Claims Group advised Mr. Dumlao that his claim was barred by the statute of limitations (Act of October 9, 1940, currently codified at 31 U.S.C. § 3702(b)(1)), since it was first received in the General Accounting Office in March 1987, more than 6 years after it first accrued.

Mr. Dumlao argues, however, that the statute providing for the death gratuity directs the Navy to make payment to the proper payee as soon as possible after the service member's death and no application for it is necessary; therefore, he indicates that our Office has no role in the matter and the barring act, which applies to claims filed here, does not apply. Mr. Dumlao also indicates that no claim was filed earlier because his parents, who are now dead, were unaware of the gratuity, and he, Mr. Dumlao, just recently learned about it.

#### ANALYSIS

The statute authorizing payment of a death gratuity applicable to Mr. Dumlao's brother at the time of his death in 1944 was the Act of June 4, 1920, ch. 228, sec. 1, 41 Stat. 824, 34 U.S.C. § 943 (Supp. IV 1940). That act provided in pertinent part as follows:

**"§ 943. Allowance on death of officer or enlisted man or nurse, to widow, child, or dependent relative.**

"Immediately upon official notification of the death from wounds or disease, not the result of his or her own misconduct, of any officer, enlisted man, or nurse on the active list of the Regular Navy or Regular Marine Corps, or on the retired list when on active duty, the Paymaster General of the Navy shall cause to be paid to the widow, and if there be no widow, to the child or children, and if there be no widow or child, to any other dependent relative of such officer, enlisted man, or nurse previously designated by him or her, an amount equal to six months' pay at the rate received by such officer, enlisted man, or nurse at the date of his or her death. The Secretary of the Navy shall establish regulations requiring each officer and enlisted man or nurse having no wife or child to designate the proper dependent relative to whom this amount shall be paid in case of his or her death. Said amount shall be paid from funds appropriated for the pay of the Navy and pay of the Marine Corps, respectively: **Provided**, That if there be no widow,

child, or previously designated dependent relative, the Secretary of the Navy shall cause the amount herein provided to be paid to any grandchild, parent, brother or sister, or grandparent shown to have been dependent upon such officer, enlisted man, or nurse prior to his or her death, and the determination of such fact by the Secretary of the Navy shall be final and conclusive upon the accounting officers of the Government . . ." (Underscoring supplied.)1/

The record furnished us by the Navy states Delfin Dumlao's marital status at the time of his death to be single and names his sister, Pelisa Santone Dumlao, as his next of kin. It also indicates that he was first listed as missing in action, and it was not until July 1945 that it was determined by the Navy that he had been killed in action in January 1944. Therefore, it appears that it was in July 1945, when the Navy had official notification of Delfin Dumlao's death, that the death gratuity became payable under the law. There is no record in the file furnished us showing whether payment was ever made, and we assume any such records have been destroyed.

As Mr. Dumlao indicates, under the law the death gratuity ordinarily would have been paid by the Navy upon notification of Delfin Dumlao's death. And at that time a claim arose for the gratuity which the person then entitled under the law could pursue. Had the Navy not made payment, the claimant could have filed a claim in our Office for the amount due since we have general authority to settle all claims against the United States,2/ which includes claims for death gratuities initially payable by a military service. See for example 25 Comp. Gen. 725 (1946), and 49 Comp. Gen. 167 (1969). Such claims, however, are subject to the statute of limitations provided by 31 U.S.C. § 3702(b).3/

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1/ This allowance was made applicable to members of the Naval Reserve by 34 U.S.C. §§ 855c-1 and 855c-2 (Supp. IV 1940).

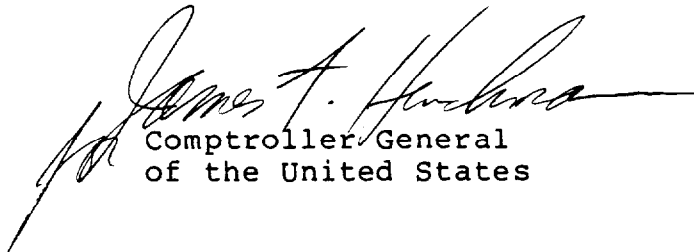
2/ Act of June 10, 1921, ch. 18, § 305, 42 Stat. 24, now codified at 31 U.S.C. § 3702(a).

3/ The original barring act of October 9, 1940, ch. 788, 54 Stat. 1061, provided a 10-year period. The act as revised and now codified at 31 U.S.C. § 3702(b)(2) now provides a 6-year period.

Thus, a claim like Mr. Dumlao's is subject to the barring act and must have been received in this Office within 6 years after the claim first accrued. Since it first accrued in 1945 and was not received until long after that period expired, it is barred from consideration. We have no authority to make an exception to the statutory time period even though the claimant may have been unaware of it. See Chester F. Milbourn, B-206669, Aug. 10, 1982.

In addition, this claim appears to be doubtful even if it had been filed timely. There was no showing that Mr. Augusto A. Dumlao was dependent upon his brother, Delfin Dumlao, prior to his death, a necessary qualification in order to receive payment.

Accordingly, the disallowance of the claim is sustained.

  
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of the United States