



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Claims under the United States Serviceman's
Deposit Program

File: B-248439, B-248507, B-248508, B-248509,
B-248510 and B-248511

Date: October 22, 1992

DIGEST

Claims by Air Force members for payment of interest on funds deposited in the U.S. Serviceman's Deposit Program (Program) are denied since at the time the deposits were made the members were ineligible to participate in the Program. Record does not reflect whether member who left funds on deposit after regulations were amended to liberalize eligibility requirements qualified under liberalized requirements.

DECISION

Air Force Captains Kevin Cole, Dennis Minard, David White, Laurie Farris and Troya Turner and First Lieutenant Lance Press have made claims for the payment of interest on funds they deposited in the United States Serviceman's Deposit Program (Program). We find they are not entitled to the interest payments.

The Program was authorized by section 1114 of the National Defense Authorization Act of 1991, Public Law 101-510, 104 Stat. 1636, November 5, 1990. It permitted members of the Armed Services serving under arduous conditions, as defined by the Secretary of Defense, pursuant to an assignment or duty detail as part of Operation Desert Shield/Storm to make deposits of unallotted current pay and allowances and to earn interest under section 1035 of title 10 of the United States Code.

In implementation of the Act, Chapter 8 of the Department of Defense Pay and Allowances Entitlements Manual (DODPM) was amended, effective January 1, 1991 (Interim Change 2-91), to allow members who were serving on a permanent duty assignment and entitled to Hostile Fire/Imminent Danger Pay (HF/IDP) for service in the Persian Gulf area to make such deposits. The deposits could only be made from unallotted current pay and allowances, defined in the regulations as: "The amount of money a member is entitled to receive on the payday immediately before the date of deposit, less

authorized deductions and allotments for dependents, insurance, etc." The deposits were to accrue 10 percent interest.

Effective July 1, 1991, the DODPM was amended by Interim Change 25-91 to permit members who were not previously eligible to participate in the Program because they were not assigned to duty in the Persian Gulf area to participate under specified circumstances. The amended regulation provides as follows:

"Effective 1 July 1991, any member assigned to duty in the Persian Gulf area for a period of at least 30 days or entitled to HF/IDP for duty in the Persian Gulf area for three consecutive months as of 30 June 1991, or later, is eligible to participate in the savings deposit program for subsequent periods during which member is entitled to HF/IDP for duty in the Persian Gulf area."
[Emphasis supplied]

Thus, members who served in the Persian Gulf area for fewer than 30 days but who were entitled to HF/IDP for Gulf duty nonetheless could become eligible for the program as of the effective date of the amended regulation.

All of the claimants were deployed to Diego Garcia, an island in the Indian Ocean not included in the DODPM definition of the Persian Gulf area, in support of Desert Shield/Storm during 1991. They reportedly were entitled to HF/IDP because of missions that they flew over Iraq and Kuwait. They deposited money during February 1991, before the regulation was amended to liberalize the Program's eligibility requirements. All of them withdrew their funds prior to July 1, 1991, the effective date of the regulation amendment, except for Captain Farris, who withdrew her money on September 15, 1991.

The members' funds were returned by the Air Force without the payment of any interest on the ground that at the time the deposits were made, the claimant's deployment to Diego Garcia did not qualify them to participate in the program.

The members argue that they would not have deposited the funds in the program if they had known they would not be receiving interest and that they would have invested the funds in other accounts which would have earned interest.

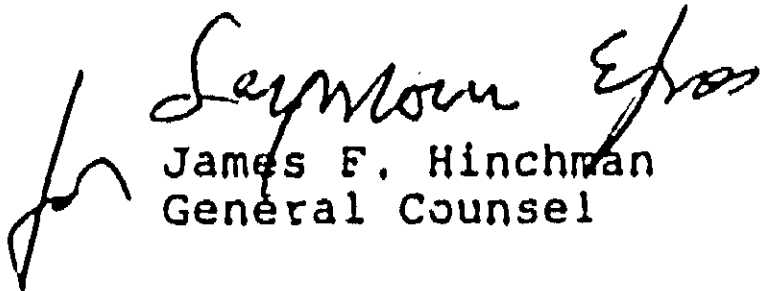
It is well settled that the United States is not liable for the payment of interest in the absence of an express statutory or contractual provision allowing its payment. Fors v. United States, 14 Cl. Ct. 709 (1988). The

regulations in effect when deposits were made by the claimants only permitted members who were assigned to duty in the Persian Gulf area as defined by the DODPM to participate. Diego Garcia was not included in that definition. These regulations were promulgated pursuant to express statutory authority and have the force and effect of law. 53 Comp. Gen. 364 (1973).

Since five of the members were not eligible to participate in the program under the regulations as written at the time they deposited and withdrew their money, no interest was payable on the withdrawn deposits.

While Captain Farris had funds on deposit following the July 1 effective date established by the amended regulation for the liberalization of the program's eligibility requirements, it does not appear that she deposited any current unallotted pay and allowances after that date. Further, the record does not indicate whether or not she was in receipt of HF/IDP after July 1, a prerequisite for program eligibility under any circumstances.

In accordance with the above discussion, all six claims must be denied.


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General Counsel