



UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL

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Subject Card

IN REPLY
REFER TO:

B-192950



October 27, 1978

The Honorable Barbara Allen Babcock
Assistant Attorney General
Civil Division
Department of Justice

Attention: Frank M. Rapoport, Attorney.
Commercial Litigation Branch

Dear Ms. Babcock:

Subject: v. United States
Ct. Cl. No. 409-78

Reference is made to your letter dated September 18, 1978 (file reference BAB:JFM:FMRapoport:rwb 154-409-78), with statutory call form of the same date, requesting a report on the petition filed September 14, 1978, in the above-entitled case. The petitioner therein seeks a total of \$342.25 in damages stemming from the alleged failure of the United States Army Finance Center to properly mail his Class E allotment. Petitioner's alleged damages consist of bank draft check charges, insufficient funds charges, stationery and postal costs, account charges, cost of a FOIA request, and loss of interest on funds for one year.

There is no record of any claim having been filed in the General Accounting Office on account of the matters set forth in the petition and we have no information concerning the facts in the present case other than the allegations made in the petition. It is noted, however, that the petitioner in this case is apparently the same individual whose petition for payment of the cost of shipping household goods from Vietnam is pending. See v. United States, Ct. Cl. No. 16-78, on which a report was furnished to you dated February 9, 1978.

The petitioner alleges that while stationed in South Vietnam he authorized, on July 12, 1970, a Class E allotment of \$75 monthly to be sent to his account with Bank of America. According to the petitioner payroll deductions were made and were reflected on the payroll vouchers he received from August through December 1970.

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Based on this information checks were drawn against this particular account. Reportedly, the checks subsequently bounced due to insufficient funds as the account was never credited with the allotments. Allegedly this was caused by the bank never having received the allotments as the mailing address used by the United States Army Finance Center was incorrect.

At the outset, it appears that the action may be barred since it first accrued in 1970 and the petition was filed in 1978, more than 6 years after accrual. 28 U.S.C. 2401 (1976).

The statutory provisions concerned with allotments of pay are found in chapter 13, title 37, United States Code. Under 37 U.S.C. 701(d) (1970) the Secretary of the Army may allow a member of the Army to make allotments from his pay for various purposes. See: 48 Comp. Gen. 138 (1968), and the Department of Defense Pay and Allowances Entitlements Manual, paragraph 60103a(6) (change 27). Our Office has held that such an allotment is a convenience which is voluntary on the part of the member and the control of funds in a member's bank account is primarily his personal responsibility. B-187245, October 7, 1976 (copy enclosed). Neither 37 U.S.C. 701(d) nor any other statute of which we are aware authorizes reimbursement of a member by the Government for service charges incurred due to overdrafts or checks returned for insufficient funds even though the pay of the member is sent directly to the bank involved. B-173783, March 2, 1976 (copy enclosed).

Furthermore, it is well established that, in the absence of a statute so providing, the Government is not liable for the negligent or erroneous acts of its officers or employees even though committed in the performance of their official duties. See: United States, 449 F.2d 228 (1971); Federal Crop Insurance Corporation v. _____, 332 U.S. 380 (1947); and German Bank v. United States, 148 U.S. 573 (1893).

In any event it does not appear that a reasonably prudent person would begin writing checks based on a newly established allotment to a bank without receiving notice from the bank that the allotments were being received.

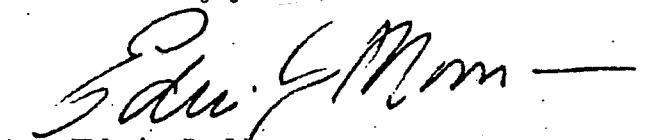
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It should also be noted that Army Regulation 27-20, chapter 3, paragraph 3-5h (June 15, 1978) provides that "damages caused by the fiscal operations of the Army, the Treasury, or by regulation of the monetary system are not payable" under the Military Claims Act, 10 U.S.C. 2733 (1976).

No record has been found in this Office of any claim or demand which would furnish the basis of a cross claim against the petitioner.

Further inquiry concerning this matter may be addressed to Mr. Stuart Kramer, telephone 275-5422.

Sincerely yours,



Edwin J. Monsma
Assistant General Counsel

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