

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

B-175190

DEC 8 1972

Dear Mr. Secretary:

Certain questions have arisen which have been brought to our attention by the Chairman, Committee on Armed Services, House of Representatives, concerning the application of the 10-year statute of limitations, 31 U.S.C. 71a, and the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, 50 U.S.C. App. 525, in light of our decision B-175190, July 17, 1972, 52 Comp. Gen. ____.

We have also received correspondence from former members of the uniformed services who wish to know whether the decision of July 17, 1972, is applicable to those members without dependents who were prisoners of war during World War II.

In that decision we concluded that members of the uniformed services without dependents who are determined to be in a missing status are entitled to a basic allowance for quarters and subsistence while in such status. We said that such allowances may be credited from the beginning of the missing status, subject, of course, to the provisions of 31 U.S.C. 71a.

The decision of July 17, 1972, was rendered upon the request of the Assistant Secretary of Defense (Comptroller) and involved members currently prisoners of war or in a missing status. It was indicated in his letter that entitlement to these allowances had been denied over the years to members without dependents entering a "missing status" on the basis of our decision of September 20, 1943, 23 Comp. Gen. 207, wherein it was held that an enlisted member of the Navy who was absent from his ship in a missing status (under the Missing Persons Act of March 7, 1942, 56 Stat. 143) was not entitled to quarters and subsistence allowances authorized by section 10 of the Pay Readjustment Act of 1942, 56 Stat. 363. This decision was based on the premise that the purpose of the statute there involved was to provide for payment of quarters and subsistence allowances only where the duty assignment of the member made it impractical to furnish quarters and subsistence normally furnished.

50 Stat. 363
Sub. 607
June 16, 1942

50 Stat. 143

In light of the statutory provisions in effect prior to October 1, 1949, as interpreted in our decision 23 Comp. Gen. 207, it is our view that unless a member without dependents was entitled to a quarters and subsistence allowance at the time of entering a missing status, there is no authority for payment of such allowances. Compare 23 Comp. Gen. 360 (1943).

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In our decision of July 17, 1972, we pointed out that the statutory provisions concerning monetary allowances in lieu of quarters and subsistence furnished in kind by the United States which were involved in our decisions 23 Comp. Gen. 207 and 895, had been superseded by sections 301 and 302 of the Career Compensation Act of 1949, 63 Stat. 812, which act became effective October 1, 1949. These sections are now codified in sections 402 and 403 of title 37, United States Code. In arriving at the conclusion reached in that decision, we noted, among other things, the difference between the statutory provisions considered in 23 Comp. Gen. 207 and 895, and the applicable provisions of the Career Compensation Act of 1949, which currently govern entitlement to quarters and subsistence allowance for members of the uniformed services.

Since the language in sections 402 and 403 of title 37, United States Code, is the same as that in sections 301 and 302 of the Career Compensation Act of 1949, and is in fact a codification of these sections, it is our view that members without dependents who were determined to be in a missing status became entitled to quarters and subsistence allowances while in such status with the enactment of the Career Compensation Act of 1949, by virtue of 37 U.S.C. 552 and the prior similar provisions from which it stems.

Section 552 of title 37, United States Code, provides that a member of a uniformed service who is on active duty and who is in a missing status, is, for the period he is in that status, entitled to receive or have credited to his account the same pay and allowances to which he was entitled at the beginning of that period or may thereafter become entitled. Therefore, since a member upon entering a missing status is no longer quartered and subsisted by the United States, he becomes entitled to the allowances in lieu thereof.

The question of entitlement to a subsistence and quarters allowance under the provisions of the Career Compensation Act of 1949, 37 U.S.C. 402 and 403, in conjunction with 37 U.S.C. 552 of members in a missing or prisoner of war status, had not been considered by us prior to our decision of July 17, 1972. In this connection, we have consistently followed the rule that when a decision constitutes an initial interpretation or construction of a statutory provision, it is regarded as effective from the effective date of the statutory provision. See 32 Comp. Gen. 17 (1952); 39 Comp. Gen. 455, 456 (1959), and 40 Comp. Gen. 14, 17 (1960). As indicated above, the Career Compensation Act of 1949 became effective October 1, 1949.

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Therefore, it must be concluded that in the absence of specific legislation authorizing the payment of basic allowances for quarters and subsistence to members of the uniformed services without dependents who were determined to be in a missing status during World War II or prior to October 1, 1949, there would be no basis for authorizing payment of any such claim. At this late date, we are of the opinion that, in the absence of a clear showing of statutory authority to pay such allowances in the circumstances involved for periods prior to the 1949 act, it is a matter for resolution by the Congress.

In the decision of July 17, 1972, we indicated that members determined to be in a missing status under the provisions of 37 U.S.C. 552 are entitled to the monetary allowances, subject, of course, to the provisions of 31 U.S.C. 71a. Under the provisions of the act of October 9, 1940, ch. 788, 54 Stat. 1061, 31 U.S.C. 71a, every claim or demand against the United States cognizable by the General Accounting Office is barred unless received in that Office within 10 full years from the date such claim first accrued. This is subject to the further provision that when a claim of any person serving in the military or naval forces of the United States accrues in time of war, or when war intervenes within 5 years after its accrual, such claim may be presented within 5 years after peace is established.

The Soldiers' and Sailors' Civil Relief Act of 1940, as amended, 50 U.S.C. App. 525, provides that the period of military service shall not be included in computing any period limited by law for the bringing of any action or proceeding by or against any person in the military service, whether the cause of action or right shall have accrued prior to or during the period of such service. We have recognized that this provision of law extends the 10-year period in 31 U.S.C. 71a with respect to the right of a member of the uniformed service to receive certain payments, such as mustering-out pay. See 36 Comp. Gen. 645 (1957), and 41 Comp. Gen. 812/818 (1962). The Soldiers' and Sailors' Civil Relief Act would also be for application to situations described in our decision of July 17, 1972.

Thus, on or after October 1, 1949, the effective date of the Career Compensation Act of 1949, a member or former member of the uniformed services who was without dependents when determined to be in a missing status or was a prisoner of war must file his claim for

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basic allowances for quarters and subsistence, within 10 years from the date such claim accrues as such period may be extended by his military service.

Sincerely yours,

R.F.KELLER

[Deputy] Comptroller General
of the United States

The Honorable
The Secretary of Defense