

DECISION



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THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20540

Edited: Name - Deletor, 12/8/78. S. V. Mayran.

FILE: B-192669

DATE: December 1, 1978

MATTER OF: Retired pay--presumption of death

DIGEST: A claim by a retired Navy member's wife for the member's retired pay accruing during the 7-year period from the date of his disappearance to the date he was declared dead by a State court may not be allowed since retired pay is payable only during the member's life and there is no showing that he was alive after his disappearance or when he actually died, and the State court determination appears to be presumptive only and does not establish that the member lived for 7 years.

This decision is the result of an appeal of a settlement by our Claims Division dated July 31, 1978, denying a wife's claim for her husband's retired pay for the period January 1, 1970, through November 26, 1976.

A retired member of the Navy disappeared from the Veterans' Administration Hospital, Seattle, Washington, on November 26, 1969, after having been diagnosed as suffering from a fatal disease. Apparently the disease was in its advanced stage at the time the member disappeared. His retired pay was suspended effective January 1, 1970. No information concerning his whereabouts or existence has been received since his disappearance. On March 25, 1977, the Superior Court of the State of Washington for Kitsap County held a hearing for the purpose of adjudicating intestacy and heirship in the matter of his estate. The Court in connection with that hearing issued an order stating that the member had died intestate on November 26, 1976, leaving property in the State of Washington subject to probate. There is no indication that the United States was represented at that hearing.

The retired pay of a retired member of the armed services accrues only during the life of the member. 48 Comp. Gen. 706 (1969). Payment of such pay is generally authorized to be made only to the retired member, except that upon his death the amount accrued but unpaid may be paid to his beneficiary as provided by 10 U.S.C. 2771. Therefore, the fact of the member's death and the date of death must be established before payment may be made on such claim. We have also held that retired pay may not be paid

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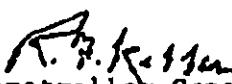
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for any period subsequent to the last day on which the member is known to have been alive, when the actual date of death is not established by competent evidence. 14 Comp. Gen. 411 (1934).

In cases where a judicial decree declares that a person is presumed to be dead on a designated date, such a decree does not establish that the person concerned lived for any fixed period or that his life did not end immediately after his unexplained absence. See Davie v. Briggs, 97 U.S. 628 (1878). Further, even a statutory presumption of death does not purport to create a conclusive presumption that the individual died at the end of the 7-year period, nor does it preclude the introduction of evidence to show that death occurred earlier. Peak v. United States, 353 U.S. 43, 45-46 (1957).

In settling similar missing persons' cases we have said that in the absence of an applicable Federal statute, we will give great weight to the determinations of the State courts under State statutes, particularly where the United States has been represented in the State court and the pertinent issues are presented to the court. See B-187165, September 16, 1976. However, where the only basis presented to us for payment of a claim for retired pay of a missing member is a State court decree entered on the basis of presumptive evidence in a proceeding to which the United States is not a party, we have followed the rule that the United States is not necessarily bound by such a decree. See Privett v. United States, 256 U.S. 201 (1921); United States v. Candelaria, 271 U.S. 432 (1926). In the absence of further proof in such cases that the member was alive after the date of disappearance, we have found such claims too doubtful for us, the accounting officers of the Government, to allow. In such cases the claimants are left to pursue their claims in the Federal courts. See for example B-176008, September 18, 1972, and B-173649, August 31, 1971.

Accordingly, in view of the lack of specific information relating to the continued life of the deceased and in view of his condition at the time he disappeared, subject claim is too doubtful for us to allow. Therefore, the Claims Division's action disallowing the claim is sustained.


Deputy Comptroller General
of the United States