

DECISION

177, 26, 1982
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THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

119013

FILE: B-207841

DATE: July 20, 1982

MATTER OF: Technical Sergeant Frederick V.
Rusokoff, Sr., USAF, Retired

DIGEST: A retired service member who disappeared and is believed drowned accrued no retired pay after the date he disappeared. Although his designated beneficiaries obtained a court decree declaring him dead, the decree did not establish the date of death. Since retired pay accrues only while the service member lives and the facts here indicate he drowned on or about the day he disappeared, the beneficiaries' claims for retired pay accrued subsequent to the date of his disappearance may not be allowed.

This case concerns the claims of the designated beneficiaries of Technical Sergeant Frederick V. Rusokoff, Sr., USAF, Retired, for any unpaid retired pay accrued by him. Sergeant Rusokoff disappeared from an Oregon beach in mid-August 1975, and has not been seen since then. Because retired pay accrues only during the life of a retired member of the Armed Forces and because the facts indicate that Sergeant Rusokoff died on or about the date he disappeared, we may not allow the the claims for retired pay that he would have accrued after the date of his disappearance.

It appears that Sergeant Rusokoff, while a resident of Maryland, was on a trip to the Western United States in 1975 when he disappeared. According to a special report of the Lincoln County (Oregon) Sheriff's Department, Sergeant Rusokoff was last seen on August 14, 1975, near Alsea Bay, Oregon. State police found his neatly folded clothing on the beach alongside a trail of bare footprints leading into the bay. Although his body has never been found, police noted that similar disappearances had been recorded in the area and concluded that Sergeant Rusokoff probably drowned.

At the time of his disappearance Sergeant Rusokoff was receiving retired pay from the Air Force. Apparently word of his disappearance reached the Air Force Accounting and Finance Center in September 1976, whereupon the Air Force discontinued Sergeant Rusokoff's retired pay, and recalled

all retired paychecks that had been issued to him since August 14, 1975. His two daughters, Cindy Ann Rusokoff and Debra Joan Gibson, and his son, Frederick V. Rusokoff, Jr., who are apparently his designated beneficiaries for any pay due him, subsequently secured a decree from the Circuit Court for Prince George's County, Maryland, declaring him dead. Although the Air Force received a copy of the petition filed in the action, the United States was neither party to nor represented in the action.

Because the state court decree was not a sufficient basis for allowing a claim for accrued retired pay, our Claims Group denied the beneficiaries' claims which were based on their request that he be determined to have died on the date of the court's decree, June 19, 1980.

We have subsequently received a letter from Arnold B. Schweizer, Esquire, indicating that he has been retained by Debra Joan Gibson and family to represent them in this matter. In that letter the attorney cites 38 U.S.C. § 108 (1976) as controlling and asserts that Sergeant Rusokoff should be presumed dead as of August 14, 1982 (7 years from the date of his disappearance) for purposes of calculating unpaid retired pay.

Section 108 of title 38 of the United States Code deals with presumption of death for payment of benefits administered by the Veterans' Administration under title 38, and does not apply to arrears of retired pay. We have no jurisdiction over claims for benefits administered by the Veterans' Administration. 38 U.S.C. § 211(a) (1976). Any claim for such benefits, including Servicemen's Group Life Insurance, should be submitted to the Veterans' Administration. Claims for accrued arrears of retired pay of missing armed service members are, however, subject to settlement by our Office. 10 U.S.C. § 2771(c) (1976).

Retired members of the Armed Forces accrue retired pay only during their lifetimes. 48 Comp. Gen. 706 (1969). Payment of retired pay is generally authorized to be made only to the retired member, except that upon his death the amount accrued but unpaid is to be paid to his beneficiary under 10 U.S.C. § 2771. Therefore, the fact of death and the date of death must first be established for us to determine whether there was any accrued retired pay due

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the member and to authorize payment under 10 U.S.C. § 2771. See Matter of Retired Pay, 58 Comp. Gen. 131 (1978). Sometimes these facts are unclear, and in these cases we must disallow the claim because we have no basis upon which to determine the amount of retired pay, if any, due. If the claimant wishes to pursue the claim, she or he must then bring an action in a court of competent jurisdiction so the court can decide the matter on the basis of all the circumstances and evidence. See Matter of Thornberry, B-174048, December 28, 1978, and cases cited therein.

In this case, the evidence in the record strongly suggests that Sergeant Rusokoff actually died on or about August 14, 1975, the last date he was reported seen alive and the date the Air Force used as a basis for terminating his retired pay. The claimants have never offered any evidence to rebut this conclusion; indeed, their petition to the Maryland court seems to be based on this conclusion and states a belief that Mr. Rusokoff drowned in the Pacific Ocean. The Maryland court decree did not state that death occurred on the date of the decree, but merely declared Sergeant Rusokoff to be dead. Moreover, Maryland has statutorily abolished the common-law presumption of death after a 7-year absence. Annotated Code of MD., Cts. & Jud. Proc. & § 3-102 (1980), and Haynes v. Metropolitan Life Insurance Co., 277 A.2d 251, 254 (1971). Thus, the decree Mr. Rusokoff's beneficiaries obtained declared him to be dead but did not establish the date on which his death occurred. However, even if the Maryland court had decreed that Sergeant Rusokoff died on the date of the decree, in view of the facts which strongly indicate that he died in August 1975, a claim for retired pay accrued after that date would be too doubtful for us to allow. See Matter of Retired Pay, cited above; and Matter of Boyles, B-201128, March 6, 1981. For these reasons, we affirm the Claims Group's disallowance of the claims.

Milton J. Fowler
for Comptroller General
of the United States