



UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

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AMERICAN REVOLUTION BICENTENNIAL  
1776-1976

OFFICE OF GENERAL COUNSEL

IN REPLY REFER TO: B-199872  
August 29, 1980

The Honorable Alice Daniel  
Assistant Attorney General  
Civil Division  
Department of Justice

*AGC 000039*

Attention: Pollie Harris McElroy, Esq.  
Commercial Litigation Branch

Dear Ms. Daniel:

Subject: Nancy Lee Presson v. United States

Ct. Cl. No. 388-80 C

File Reference: AD:DE:PHMcELROY:cl, 154-388-80 C

Petitioner alleges that she was unlawfully separated from the United States Army on or about May 19, 1975, for alleged schizophrenia, the symptoms of which were willfully, maliciously, and intentionally induced conspiratorially by the individual District Court defendants. She seeks disability compensation for physical and mental bodily injuries and pain and suffering sustained while she was on active duty, backpay, and correction of records expunging any reference to mental illness.

There is no record of any claim having been filed in the General Accounting Office in connection with the matters set forth in the petition. Furthermore, we have no record of any counterclaim, setoff, or other demand which would furnish the basis of a cross action against the petitioner.

Separation and retirement for disability from the armed services are governed by the provisions of Chapter 61, Title 10, of the United States Code. Generally, the Court of Claims has no jurisdiction over determinations by the Secretary of a military department with regard to percentage of disability or fitness for duty unless it can be shown that the Secretary's determination was arbitrary or capricious or not supported by substantial evidence. See Finn v. United States, 548 F.2d 340, 212 Ct. Cl. 353 (1977), and Craft v. United States, 544 F.2d 468, 210 Ct. Cl. 170 (1976).

In addition, it appears that the petitioner seeks relief, alternatively, in the nature of damages based on her claim which

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B-199872

sounds in tort. The Court of Claims does not have jurisdiction of tort claims. See 28 U.S.C. § 1491 (1976); Clark v. United States, 461 F.2d 781 (Ct. Cl. 1972), cert. denied, 409 U.S. 1028 (1972); and McCreery v. United States, 161 Ct. Cl. 484 (1963).

If I may be of further assistance in this matter, please contact me at 275-6404.

Sincerely yours,

*Marla Diamond*

Marla Diamond  
Attorney-Adviser