

B-257131

May 30, 1995

Mr. W. H. Salter
Department of Veterans Affairs
Regional Office
110 9th Avenue South
Nashville, Tennessee 37203

Re: Donald B. Williams v. Department of Veterans Affairs, Civil No. 3:93-0363
(M.D. Tn. 1993)

Dear Mr. Salter:

This responds to your request for reconsideration of the decision of our General Government Division to treat as a refund from Department of Veterans Affairs' (VA) appropriations the \$706 paid to Mr. Donald B. Williams in the referenced case. For reasons set forth below, we conclude that the \$706 was properly treated as a refund.

Mr. Williams shared a joint bank account with his mother during 1992. His mother's monthly VA benefit of \$706 was deposited directly into that account on October 30, 1992. His mother died the next day, October 31, 1992. Under VA regulation, the effective date of discontinuance of the benefit award to Mr. Williams' mother upon her death was September 30, 1992, the last day of the month preceding the month of payee's death. 38 C.F.R. § 3.500 G(1). The VA, therefore, was entitled to the return of the \$706.

The VA, without notice to Mr. Williams that it would recoup the \$706, had Treasury recover the \$706 from Mr. Williams' account. Mr. Williams, arguing that the VA had failed to provide him with due process, filed a tort claim against the VA in federal district court in Tennessee for wrongful taking of the \$706. Upon the urging of the judge, the parties entered into a "Stipulation of Dismissal" on September 2, 1993, under which Mr. Williams agreed to accept \$706 from the VA as a "full and complete settlement of his claim against the [VA]," and to the dismissal of the action. The Adverse Judgment Data Sheet submitted by the Assistant United States Attorney characterized the claim as "Tort claim--for wrongfully depriving him of his property and the VA concedes liability and refunds the money:" On December 22, 1993, our General Government Division advised the Assistant United States Attorney representing VA in this matter that because the

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settlement appeared to be an agreement to refund an amount improperly retrieved by VA from Mr. Williams, the Judgment Fund was not available to make the payment. 31 U.S.C. § 1304(a)(1).

After reconsideration, we conclude that the \$706 was properly treated as a refund. We were informally advised by your office that the \$706 retrieved by Treasury was returned to VA's Compensation and Pension Benefits appropriation. In situations such as this, where monies taken from a claimant and deposited to the credit of an appropriation or fund other than the general fund of the Treasury are returned, pursuant either to a settlement or award, the payment must be made from the appropriation or fund so benefitted, rather than from the Judgment Fund. 61 Comp. Gen. 224 (1982); 17 Comp. Gen. 859, 860 (1938). To allow payment from the Judgment Fund in such instances would permit agencies to augment their appropriations, *i.e.*, to obtain, retain, and use monies beyond those made available to them by the Congress. 72 Comp. Gen. 164 (1993). Under the settlement agreement, VA agreed to return the \$706 to Mr. Williams. The \$706 payment, therefore, is properly characterized as a refund rather than a monetary award against the United States government. Since VA's appropriation received the \$706, VA's appropriation was the proper source of the refund.

Sincerely yours,

Gary L. Kepplinger
Associate General Counsel