

MR Kramer
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DECISION

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

Entitlement to Air Force Member's Pay and Allowances

FILE: B-196808

DATE: July 17, 1980

MATTER OF: The Reverend C. Jerome Huneycutt

DIGEST: (1) A member of the Air Force designated his father, who was not dependent upon him for support, to receive an allotment of all his pay and allowances in case he became missing. After the member became missing the Secretary of the Air Force had authority under the Missing Persons provisions to change the allotment to the father when he determined it was in the interest of the member to put pay and allowances into the Uniformed Services Savings Deposit Program rather than pay them over to the father.

(2) The father of a member in a missing status is not entitled to the accrued pay and allowances, including amounts deposited in the Uniformed Services Savings Deposit Program (USSDP), when the member is determined to have been killed in action, even though he was designated to receive an allotment of 100 percent of the member's pay and allowances if he went in a missing status, since the Secretary concerned has the authority under 37 U.S.C. 551-558 to discontinue such an allotment. The amounts accruing to member's account, including deposits in the USSDP are then distributed in accordance with 10 U.S.C. 2771, in this case to the designated beneficiaries, his sisters.

The issue is whether The Reverend C. Jerome Huneycutt is entitled to receive pay and allowances due Major Charles J. Huneycutt, Jr., his son, which were invested under 10 U.S.C.

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B-196808

1035(e)(1976), in the Uniformed Services Savings Deposit Program (USSDP) while he was carried in a missing in action status. For the following reasons Mr. Huneycutt is not entitled to receive the money in question.

The question was raised in a letter dated October 22, 1979, from Mr. Robinson O. Everett, Mr. Huneycutt's attorney and constitutes an appeal of our Claims Division's settlement of September 20, 1979, denying the claim.

On October 6, 1967, Major Charles J. Huneycutt, Jr., then a Lieutenant, executed Air Force (AF) form 246, in which he indicated that the claimant was to receive 100 percent of his pay allotment if he were placed in a missing status. On that same form Major Huneycutt also indicated that his four sisters were to share equally as beneficiaries of any gratuity pay and unpaid pay and allowances including Airman's Deposits due him upon his death.

On November 10, 1967, Major Huneycutt was reported missing in action and was eventually declared killed in action on January 3, 1979. During this period Major Huneycutt was entitled to receive or have credited to his account the same pay and allowances to which he was entitled at the time he was reported missing or to which he would subsequently become entitled as a result of promotions and pay increases. See 37 U.S.C. 551-558 (1976).

Prior to entering a missing status, Major Huneycutt made a cash deposit of \$300 to the USSDP. This deposit coupled with Air Force policy to encourage deposits in the USSDP of 10 percent of the pay of members missing in action so that they would have some savings upon their return led the Air Force to inform the claimant on December 13, 1967, that an allotment equal to 10 percent of Major Huneycutt's monthly pay and allowances would be deposited in the USSDP. The balance of the monthly unallotted pay would be forwarded to the claimant.

B-196808

The Air Force has advised that during the period January 31, 1968, through May 31, 1972, the claimant received allotments of pay totalling \$34,913.39, and was also allowed to withdraw \$6,089.36, from Major Huneycutt's USSDP account.

Upon review of Major Huneycutt's file the Air Force determined that his Air Force income was not being managed in his best interest. On August 19, 1971, the claimant was informed of this and was told that unless he could show that an investment program in Major Huneycutt's name was providing a greater return than the guaranteed 10 percent of the USSDP then the allotment to the USSDP would be increased to \$865 per month. He was also advised in that letter that Air Force records showed him not to be a dependent of his son and that no financial hardship to him could be seen as a result of increasing the allotment. However, if he were in fact dependent on his son, he was advised to furnish the Air Force with substantiating facts for evaluation.

On February 9, 1972, the claimant was further informed that the Air Force, after reviewing the laws and policies relating to the administration of the pay of all missing and captured members, was establishing a firm policy that the pay of all members missing in action without dependents would be placed in the USSDP unless that action would result in irreparable financial loss to investment programs already established for the member or cause financial hardships to the member's family. The objective of this policy was to assure the availability of money to take care of financial liabilities and anticipated increases in expenses upon the member's return to the United States. He was again invited to provide the Air Force with information if he were in fact dependent on his son.

Apparently, several attempts were made by the parents to establish themselves as dependent on their son. However, the Air Force determined that they did not satisfy the requirements of 37 U.S.C. 401 and the Department of Defense Military Pay and Allowances Entitlements Manual (DODPM).

B-196808

In July 1974, the Air Force received a request from Major Huneycutt's sisters for a large withdrawal from his USSDP account to satisfy financial obligations of the parents. This request (as related to the adult sisters) was honored because the sisters were designated to eventually receive the arrears of pay of Major Huneycutt.

It should be noted that the claimant protested all of these actions taken by the Air Force on the grounds that Major Huneycutt intended for him to receive all of his pay and allowances and that the inflation rate was rising to the point where the USSDP would not be as good an investment as some others.

The Air Force reports that its policy was to try and have funds available for the member if and when he returned to military control. In many instances, the member designated a wife or other relative to receive a 100 percent of pay and allowances if he was missing. Initially, this request was honored, but when 10 U.S.C. 1035(e) was adopted, this policy was changed to allot at least 10 percent of the member's pay to the USSDP if the member was married. In all other cases, the policy was eventually changed to a 100 percent allotment to USSDP unless the named recipient was in fact dependent upon the member. However, a deviation from this policy was allowed on an individual basis.

Upon being notified of the change of Major Huneycutt's status from missing in action to killed in action the Air Force proposed to pay to Major Huneycutt's sisters the death gratuity and any unpaid pay and allowances. Since the money in Major Huneycutt's USSDP account was included as unpaid pay and allowances this was also to be disbursed to his sisters.

On September 20, 1979, our Claims Division disallowed Mr. Huneycutt's claim for the unpaid pay and allowances due Major Huneycutt and authorized payment to Major Huneycutt's sisters.

B-196808

Mr. Huneycutt appeals that decision on the ground that although the Air Force, in its discretion, probably had the authority to invest Major Huneycutt's pay and allowances in the USSDP, the Air Force's action could not change the ultimate disposition of the proceeds provided for by Major Huneycutt. That is, Major Huneycutt intended that his father receive all the pay and allowances accruing while he was in a missing status. As a result, he contends he is entitled to the unpaid pay and allowances now due on the determination that Major Huneycutt was killed in action.

As previously stated, Major Huneycutt, during the period he was missing in action, was entitled to receive or have credited to his account the same pay and allowances to which he was entitled at the time he was reported missing or to which he would subsequently become entitled as a result of promotions and pay increases. 37 U.S.C. 552 (1976). Under the authority of 37 U.S.C. 553, the Secretary of the department concerned is authorized to make allotments from a missing member's pay and allowances. Generally, this authority extends to situations where an allotment may be directed by the Secretary concerned when he considers it in the best interest of the member, his dependents, or the United States. If circumstances warrant a change in the allotment the Secretary of the Air Force or his designee is authorized to initiate, continue, discontinue, increase, decrease, suspend or resume payments of the allotment. See 37 U.S.C. 553(e) and chapter 3, part 4 of the DODPM. In addition, the Secretary of the Air Force or his designee is enabled to initiate, modify, stop or withdraw savings allotted to USSDP even though the member had an opportunity to deposit amounts in the savings plan and elected not to do so. See 10 U.S.C. 1035(e) and chapter 8, part 7 of the DODPM.

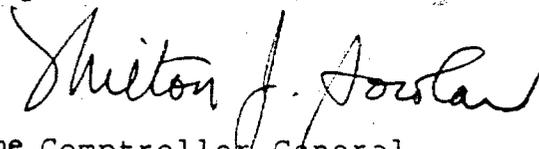
In enacting these statutes Congress vested discretionary authority solely in the Secretary concerned to administer the pay and allowances accounts of missing members. The only limitation on the Secretary concerned is that he make his determinations in the best interest of the member, his dependents, and the United States.

B-196808

Although Major Huneycutt did designate his father to receive 100 percent allotment of his pay if he became missing, in view of the fact that he had no dependents, we cannot conclude that the Air Force's actions exceeded the authority given it in this case. In fact, the Air Force's actions appear to be entirely consistent with the intent of the law in that they were designed to protect the interests of the member, should he have returned from a missing status. See Cherry v. United States, 594 F. 2d 795 (Ct. Cl. 1979).

Furthermore, Mr. Huneycutt's contention that his son intended that he receive all the pay and allowances accruing during the period of his missing status cannot be the basis for paying him the amounts in the USSDP account since these funds are for disposition under 10 U.S.C. 2771 and Major Huneycutt designated his sisters to receive both the gratuity pay and the arrears of pay and allowances disposable under that section.

Accordingly, the balance of any pay and allowances due Major Huneycutt should be paid to his sisters, the designated beneficiaries in accordance with 10 U.S.C. 2771, and the claim of C. Jerome Huneycutt must be denied.



For the Comptroller General
of the United States