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

B-193888

MAR 23 1979

Rep.

The Honorable Thomas A. Luken  
Member, United States House  
of Representatives  
3409 Federal Building  
Cincinnati, Ohio 45202

[Entitlement to Death Gratuity]

Dear Mr. Luken:

per name

Further reference is made to your letter dated December 12, 1978, with enclosures, concerning the entitlement of your constituent, Mr. Edward Gregory Thomas, to receive the 6-month death gratuity due in the case of his brother, the late PFC Robert W. Thomas, USMC, who died on July 21, 1968.

The record in the case shows that the deceased member properly designated his brother, Edward, to receive the 6-month death gratuity. At the time of the member's death in 1968, Edward was but 14 years of age. A claim was presented to the Marine Corps on his behalf by his mother as natural guardian. In correspondence dated April 21, 1969, she was advised by the Casualty Section of the Marine Corps that the amount of money involved was \$1,118.40 and that our Office had previously ruled, in general, that in order for an adult to receive sums due a minor as a death gratuity which are in excess of \$1,000, the adult would be required to be appointed legal guardian by a court of competent jurisdiction, even though the adult otherwise qualified as natural guardian. Since Mrs. Thomas had not been so appointed, the Marine Corps did not authorize payment to her at that time.

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In the 1969 letter, Mrs. Thomas was advised that in lieu of her appointment as legal guardian there was an alternative course of action which could be pursued. It was suggested that since Edward would attain legal majority on September 24, 1975, his filing of a claim in his own right could be deferred until that time. She was advised that the pertinent statute limiting the filing of a claim would not bar the claim, so long as it was received here in the General Accounting Office not later than July 20, 1978.

On review, we find that the statements made by the Marine Corps at that time were correct and properly reflected the law as well as the decisions of this Office as they relate to disbursement of funds to minors. Unfortunately, the Marine Corps could not foresee in 1969 that the time limitation referred to by them and contained in 31 U.S.C. 71a, would be amended by section 801 of Public Law 93-604,

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approved January 2, 1975, 88 Stat. 1965, to reduce the time within which a claim could be filed here, from 10 years to 6 years, effective July 2, 1975. This meant that effective that latter date, any claim cognizable by this Office which was more than 6 years old and which had not been previously received in our Office was forever barred from consideration by us thereafter.

The first notice we had of the claim in the present case was by correspondence from the Marine Corps dated October 26, 1976, and received here on the 27th, enclosing an undated claim certificate executed by Edward Thomas in his own right.

Material contained in the file suggests that the fact that a proper claim was filed with the Marine Corps in 1969--which claim could have been paid by them at that time but for the monetary limitations previously mentioned--should satisfy the requirements of 31 U.S.C. 71a so as to permit payment now.

Section 305 of the act of June 10, 1921, ch. 18, 42 Stat. 24, 31 U.S.C. 71a, provides that all claims against the United States shall be adjusted and settled in the General Accounting Office. In conjunction therewith, 31 U.S.C. 71a, as amended, *supra*, imposes time and event constraints on that authority and provides in part:

"Every claim \* \* \* cognizable by the General Accounting Office under sections 71 and 236 of this title shall be forever barred unless such claim \* \* \* shall be received in said office within 6 years after the date such claim first accrued: \* \* \*"

Under the operative words of those provisions, receipt of the claim in this Office within 6 years is a condition precedent to the claimant's right to have such claimed entitlement considered on its merits. The fact that the claim was filed with the Marine Corps would not in any way affect the statutory requirement that the claim must be received here within the time designated. We know of no authority whereby this Office may waive any of the provisions of the barring act or make any exceptions to the time limitation there imposed.

In that connection, the Marine Corps Finance Center has suggested that this matter might be the proper subject of a report by us to the

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Congress under the provisions of the Meritorious Claims Act of 1928, 45 Stat. 413, 31 U.S.C. 236 (1976). While Mr. Thomas' case does present matters involving equitable considerations, unfortunately, we are precluded from so reporting it since the barring act specifically includes in its prohibitions situations otherwise reportable under the Meritorious Claims Act, supra, which are more than 6 years old.

It is regrettable that Mr. Thomas' claim was not filed in this Office prior to July 2, 1975, for if it had been, we could have authorized payment to him after he attained legal majority. Because it was not so filed, there is no legal basis upon which we may act in the matter.

We trust this will serve the purpose of your inquiry and regret a more favorable reply cannot be made.

Sincerely yours,

R.F.KELLER

Deputy Comptroller General  
of the United States