



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Captain John R. Kindred, USAF (Deceased)

File: B-261579

Date: November 1, 1995

DIGEST

Widow of Air Force Officer who died in the line of duty 13 days prior to the effective date of an agreement to serve seven more years on active duty in return for aviation retention bonus may be paid first year's installment of the bonus following the enactment by Congress of legislation that survivors of persons who died in the line of duty less than 14 days prior to the effective date of such an agreement shall be paid the appropriate amount of the bonus.

DECISION

The Defense Finance and Accounting Service, Denver Center (DFAS) has requested our decision regarding the claim of Mrs. Lori Kindred for the aviation retention bonus of her husband, Captain John R. Kindred, USAF (Deceased).

Captain Kindred signed an agreement with the Air Force on February 14, 1994, which provided that he agreed to serve on active duty from May 19, 1994, through June 1, 2001, in return for \$84,433.33 of "Aviator Continuation Pay under 37 U.S.C. section 301b." Captain Kindred was to receive an initial payment of \$42,216.67 on the effective date of the agreement (May 19, 1994), with the remainder paid in anniversary installments during the life of the contract. Captain Kindred died in an F-15C airplane crash in the line of duty on May 6, 1994, 13 days prior to the effective date of the agreement.

Section 8141 of the Department of Defense Appropriations Act of 1995, Pub. L. No. 103-335, September 30, 1994, provides:

"Notwithstanding any other provision of law, within the funds made available by this Act, the Department of Defense shall pay the appropriate amount of Aviation Continuation Pay authorized by 37 U.S.C. 301(b) to the survivors of persons who have signed reenlistment contracts on or after January 1, 1994, but whose service

connected death predates the effective date of such reenlistment contract by less than 14 days."

This provision was included in the legislation to specifically cover Captain Kindred's situation. See 140 Cong. Rec. S11,255 (daily ed. Aug. 11, 1994) (statement of Sen. Hatch).

DFAS questions whether the above statute is sufficient authority to make a payment to Captain Kindred's widow and in what amount such payment should be. DFAS notes that no statute contains the term "aviation continuation pay", section 8141 refers to "reenlistment contracts" while Captain Kindred was an officer, not an enlisted member, and 37 U.S.C. § 301(b) refers to hazardous duty pay.

Section 301b of title 37, authorizes the Secretary concerned to pay an aviation retention bonus of up to \$12,000 per year to an aviation officer who executes an agreement to remain on active duty in aviation service. While section 8141 uses the term "aviation continuation pay," we believe that this phrase has the same meaning as an aviation retention bonus. The same phrase is used in the agreement signed by Captain Kindred and is employed in the Department of Defense Military Pay and Allowances Manual (DODMPAM) (DOD 7000.14-R) in the regulations which govern the use and payment of the aviation retention bonus. Accordingly, the use of such a phrase in section 8141 would not affect any entitlement conferred by the law.

Also, the use of the phrase "reenlistment contract" likewise would not be a bar to payment since it is clear that the aviation retention bonus is only payable to officers, and the agreement signed by Captain Kindred has the same effect of a reenlistment contract signed by an enlisted member, *i.e.* the member agrees to remain on active duty in exchange for the receipt of a bonus.

Finally, it is clear from the legislative history of section 8141 which section of the United States Code was intended, namely 37 U.S.C. § 301b. The fact that section 8141 cites 37 U.S.C. § 301(b) rather than 37 U.S.C. § 301b should be treated as a typographical error obvious on its face and the statute given the effect intended. 58 Comp. Gen. 358 (1979).

Regarding the amount of the bonus payable to Captain Kindred's widow, section 8141 states that the "appropriate amount" should be paid. DFAS asks whether the appropriate amount is the entire \$84,433.33 of aviation continuation pay or only the first year's installment of \$42,216.67.

Section 301b(e) states that upon acceptance of the written agreement, the total amount payable pursuant to the agreement becomes fixed and may be paid in either a lump sum or installments. The same language is contained in paragraph 12004a of the DODMPAM. Air Force Instruction 36-3004, issued June 10, 1994, a month after

the death of Captain Kindred, states the aviation continuation pay ceases immediately upon the member's death while on active duty and no further anniversary payments are to be made.

We find that the appropriate amount to be paid is the first year installment, \$42,216.67, which is the amount Captain Kindred would have received if he had died after the effective date of the agreement during the first year. A review of the agreement signed by Captain Kindred shows that to continue to receive the annual installment payments of the bonus, he had to remain eligible and available for aviation service. Therefore, while the total amount payable became fixed upon acceptance of the agreement, the agreement contemplated that the subsequent installments would cease for various reasons, i.e., promotion, medical reasons, separation. The fact that the Air Force Instruction became effective after his death does not require a different result, but rather supports the above result in the circumstances here.

/s/Seymour Efros
for Robert P. Murphy
General Counsel