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APPROVED
JAN 2-1974

ACTION

THE WHITE HOUSE
WASHINGTON

Last Day: January 4

December 31, 1974

*Posted
1/3
To Archive
1/3*

MEMORANDUM FOR THE PRESIDENT
FROM: KEN COLE
SUBJECT: Enrolled Bill H.R. 2208
Relief of Raymond W. Suchy

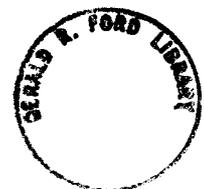
Attached for your consideration is H.R. 2208, sponsored by Representative Davis, which provides for the payment of \$28,758.29 to Second Lieutenant Raymond W. Suchy, United States Army (retired) for retirement benefits which accrued prior to March 17, 1962 and which he did not receive due to administrative error.

OMB recommends approval and provides additional background information in its enrolled bill report (Tab A).

Max Friedersdorf (Loen) and Phil Areeda both recommend approval.

RECOMMENDATION

That you sign H.R. 2208 (Tab B).



WITHDRAWAL SHEET (PRESIDENTIAL LIBRARIES)

FORM OF DOCUMENT	CORRESPONDENTS OR TITLE	DATE	RESTRICTION
Memorandum	Assistant Director for Legislative Reference to the President (redacted copy)	12/30/1974	C

File Location:
 Legislation Case Files, Box 19, "1/2/75, H.R. 2208" / JPS / 2/24/16

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

DEC 30 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 2208 - For the relief of Raymond
W. Suchy
Sponsor - Rep. Davis (R) Wisconsin

Last Day for Action

January 4, 1975 - Saturday

Purpose

Provides for payment of \$28,758.29 to Second Lieutenant Raymond W. Suchy, United States Army (retired) for retirement benefits which accrued prior to March 17, 1962, and which he did not receive due to administrative error.

Agency Recommendations

Office of Management and Budget	Approval
Department of the Army	No objection

Discussion

While serving as a second lieutenant during World War II,

[REDACTED]
he was retired in 1945 [REDACTED]

In 1946, he returned all of the retired pay he had received up to that time and requested that his name be "irrevocably" removed from the "retired pay list." His mother later explained that his reason for this action was that he did not want to be "reminded of the past."

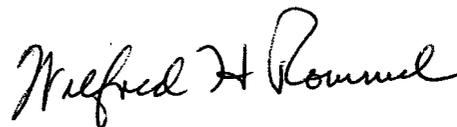


Subsequently, in letters replying to inquiries from Mr. Suchy in 1947, both the Veterans Administration and the War Department advised him that he had the right to have his retired pay discontinued without jeopardizing his right to make a future claim for such payments. Neither letter mentioned the fact that future payment of formerly-accrued retired pay could become time barred.

In March 1972, Mr. Suchy filed a claim for all past due retired pay. He was paid for the period of March 17, 1962, up to the time of his request for reinstatement, but the Comptroller General denied any payments for the period prior to March 17, 1962, because of the applicable ten-year statute of limitations.

H.R. 2208 would provide for payment to Mr. Suchy of his retired pay for the period prior to March 17, 1962. The amount of payments due him are \$28,758.29. In its enrolled bill letter, the Army states:

"In the present case, the Department is of the opinion that the Statute of Limitations should not be imposed as an obstacle to a complete repayment of all amounts which he repaid or declined to accept prior to 1962. The [REDACTED] of the claimant at the time of his election, and his substantive entitlement to the retired pay clearly indicate that the equities favor the grant of relief. Even if his [REDACTED] had improved after his initial rejection of his retired pay, the letters from the Veterans Administration and this Department failed to put him on notice that a request for reinstatement of pay could be time barred. In fact, the letters clearly indicate an opposite result."



Assistant Director for
Legislative Reference

Enclosures

WITHDRAWAL SHEET (PRESIDENTIAL LIBRARIES)

FORM OF DOCUMENT	CORRESPONDENTS OR TITLE	DATE	RESTRICTION
Letter	Howard Calloway to Roy Ash (redacted copy)	12/26/1974	C

File Location:

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DEPARTMENT OF THE ARMY
WASHINGTON, D.C. 20310

26 DEC 1974

Honorable Roy L. Ash
Director, Office of Management
and Budget

Dear Mr. Ash:

Reference is made to your request for a report on enrolled enactment of H.R. 2208, 93rd Congress, an Act, "For the relief of Raymond W. Suchy, second lieutenant, United States Army (retired)."

On January 31, 1974, your office cleared a "no opposition" report of the Department of the Army on H.R. 2208, 93rd Congress. That bill sought the same relief, with the exception of minor adjustments including the amount of the indebtedness which was made at the suggestion of the General Accounting Office (the bill was in the amount of \$28,915.79). Accordingly, the Department of the Army has no objection to the enrolled enactment.

While serving as a second lieutenant in New Guinea during World War II, the claimant [REDACTED]

On December 22, 1946, Lieutenant Suchy returned all the retired pay previously received by him and requested that his name be "irrevocably" removed from the "retired pay list." His mother later explained that he did not want to be reminded of the past.



On February 28, 1947, the Veterans Administration advised Lieutenant Suchy that he had the right to discontinue his retirement pay without jeopardizing his right to make a future claim for such payments. The Secretary of War advised him to the same effect on May 27, 1947.

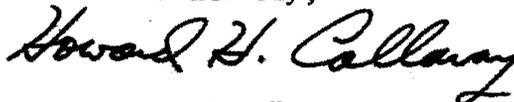
On March 6, 1972, the claimant filed a claim for all past due retired pay. It was allowed for the period March 17, 1962, through February 29, 1972, but denied by the Comptroller General for all other periods because of the ten year statute of limitations.

The effect of the bill would be to restore the claimant's retired pay for the period during the barred period.

In the present case, the Department is of the opinion that the Statute of Limitations should not be imposed as an obstacle to a complete repayment of all amounts which he repaid or declined to accept prior to 1962. The mental condition of the claimant at the time of his election, and his substantive entitlement to the retired pay clearly indicate that the equities favor the grant of relief. Even if his mental condition had improved after his initial rejection of his retired pay, the letters from the Veterans Administration and this Department failed to put him on notice that a request for reinstatement of pay could be time barred. In fact, the letters clearly indicate an opposite result.

The cost of the Act, if approved, will be \$28,758.29.

Sincerely,

A handwritten signature in cursive script that reads "Howard H. Callaway". The signature is written in dark ink and is positioned above the typed name and title.

Howard H. Callaway
Secretary of the Army

THE WHITE HOUSE

WASHINGTON

December 31, 1974

MEMORANDUM FOR:

WARREN HENDRIKS

FROM:

Ken Lauer for

MAX L. FRIEDERSDORF

SUBJECT:

Action Memorandum - Log No. 913

The Office of Legislative Affairs concurs with the Agencies that the enrolled bill should be signed.

Attachments



WITHDRAWAL SHEET (PRESIDENTIAL LIBRARIES)

FORM OF DOCUMENT	CORRESPONDENTS OR TITLE	DATE	RESTRICTION
Memorandum	Assistant Director for Legislative Reference to the President (redacted copy)	12/30/1974	C

File Location:
 Legislation Case Files, Box 19, "1/2/75, H.R. 2208" / JPS / 2/24/16

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EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

DEC 30 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 2208 - For the relief of Raymond
W. Suchy
Sponsor - Rep. Davis (R) Wisconsin

Last Day for Action

January 4, 1975 - Saturday

Purpose

Provides for payment of \$28,758.29 to Second Lieutenant Raymond W. Suchy, United States Army (retired) for retirement benefits which accrued prior to March 17, 1962, and which he did not receive due to administrative error.

Agency Recommendations

Office of Management and Budget

Approval

Department of the Army

No objection

Discussion

While serving as a second lieutenant during World War II,

he was retired in 1945

In 1946, he returned all of the retired pay he had received up to that time and requested that his name be "irrevocably" removed from the "retired pay list." His mother later explained that his reason for this action was that he did not want to be "reminded of the past."

Subsequently, in letters replying to inquiries from Mr. Suchy in 1947, both the Veterans Administration and the War Department advised him that he had the right to have his retired pay discontinued without jeopardizing his right to make a future claim for such payments. Neither letter mentioned the fact that future payment of formerly-accrued retired pay could become time barred.

In March 1972, Mr. Suchy filed a claim for all past due retired pay. He was paid for the period of March 17, 1962, up to the time of his request for reinstatement, but the Comptroller General denied any payments for the period prior to March 17, 1962, because of the applicable ten-year statute of limitations.

H.R. 2208 would provide for payment to Mr. Suchy of his retired pay for the period prior to March 17, 1962. The amount of payments due him are \$28,758.29. In its enrolled bill letter, the Army states:

"In the present case, the Department is of the opinion that the Statute of Limitations should not be imposed as an obstacle to a complete repayment of all amounts which he repaid or declined to accept prior to 1962. The [REDACTED] of the claimant at the time of his election, and his substantive entitlement to the retired pay clearly indicate that the equities favor the grant of relief. Even if his [REDACTED] had improved after his initial rejection of his retired pay, the letters from the Veterans Administration and this Department failed to put him on notice that a request for reinstatement of pay could be time barred. In fact, the letters clearly indicate an opposite result."

Welfred H. Rowland

Assistant Director for
Legislative Reference

Enclosures

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 913

Date: December 30, 1974

Time: 5:00 p.m.

FOR ACTION: Max Friedersdorf
Phil Areeda
N

cc (for information): Jerry Jones
Warren Hendriks
Jack Marsh

FROM THE STAFF SECRETARY

DUE: Date: Tuesday, December 31

Time: 2:00 p.m.

SUBJECT:

Enrolled Bill H.R. 2208 - For the relief of Raymond Suchy

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing



PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

Date: December 30, 1974

Time: 5:00 p.m.

FOR ACTION: Max Friedersdorf
Phil Areeda ✓

cc (for information): Jerry Jones
Warren Hendriks
Jack Marsh

FROM THE STAFF SECRETARY

DUE: Date: Tuesday, December 31

Time: 2:00 p.m.

SUBJECT:

Enrolled Bill H.R. 2208 - For the relief of Raymond Suchy

ACTION REQUESTED:

- For Necessary Action
- For Your Recommendations
- Prepare Agenda and Brief
- Draft Reply
- For Your Comments
- Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

No Objection
P Areeda



PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

WITHDRAWAL SHEET (PRESIDENTIAL LIBRARIES)

FORM OF DOCUMENT	CORRESPONDENTS OR TITLE	DATE	RESTRICTION
Report	Senate Report - Raymond W. Suchy (redacted copy)	12/17/1974	C

File Location:

Legislation Case Files, Box 19, "1/2/75, H.R. 2208" / JPS / 2/24/16

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Calendar No. 1317

93^D CONGRESS }
2d Session }

SENATE

{ REPORT
No. 93-1388

RAYMOND W. SUCHY, SECOND LIEUTENANT, U.S. ARMY (RETIRED)

DECEMBER 17, 1974.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany H.R. 2208]

The Committee on the Judiciary, to which was referred the bill (H.R. 2208) for the relief of Raymond W. Suchy, second lieutenant, U.S. Army (retired), having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to pay Raymond W. Suchy, a retired Army second lieutenant, \$28,758.29 in full settlement of his claims for retirement benefits from March 23, 1945, to March 16, 1962, which he failed to receive due to administrative error.

STATEMENT

The facts of this case, as contained in House Report 93-1004, are as follows:

The sum referred to in the bill is the balance of amounts of retirement pay barred by the ten year statute of limitations which accrued prior to March 16, 1962.

Raymond W. Suchy began active duty as a Second Lieutenant on November 14, 1942. He served as an aircraft warning officer and as an administrative officer until his transfer to New Guinea in November 1944. On November 29, 1944,

paid retired pay. The computation made by the General Accounting Office of the amount due is as follows:

Period	Rate per month	Amount
Mar. 24 to July 17, 1945.....	\$112.50	\$427.50
July 18 to Aug. 29, 1945.....		
Aug. 30, 1945, to June 30, 1946.....	112.50	1,128.75
July 1, 1946, to Apr. 30, 1952.....	135.00	9,450.00
May 1, 1952, to Mar. 31, 1955.....	140.40	4,914.00
Apr. 1, 1955, to May 31, 1958.....	148.82	5,655.16
June 1, 1958, to Mar. 16, 1962.....	157.75	7,182.88
Total.....		28,758.29

The amendments recommended by the committee are those suggested by the General Accounting Office.

The Department of the Army has stated that it has no objection to relief in this instance. The Army stated:

"The Department of the Army is not opposed to the bill. Ordinarily the Department objects to the waiver of the Statute of Limitations if it appears that the Government will be prejudiced in developing the facts, or if the claimant does not make a compelling showing that the equities favor a waiver. In the present case, the Department is of the opinion that the Statute of Limitations should not be imposed as an obstacle to a complete repayment of all amounts which he repaid or declined to accept prior to 1962. The [redacted] of the claimant at the time of his election, and his substantive entitlement to the retired pay clearly indicate that the equities favor the grant of relief. Even if his [redacted] had improved after his initial rejection of his retired pay, the letters from the Veterans' Administration and this Department failed to put him on notice that a request for reinstatement of pay could be time barred. In fact, the letters clearly indicate an opposite result."

The committee agrees that in equity this retired officer is entitled to the amount of retired pay actually withheld from him. It is recommended that the amended bill be considered favorably.

In agreement with the views of the House of Representatives, the committee recommends that the bill be favorably considered.

Attached and made a part of this report are the reports of the Department of the Army and of the Comptroller General of the United States.

DEPARTMENT OF THE ARMY,
Washington, D.C., February 4, 1974.

HON. PETER W. RODINO, JR.,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of the Army with respect to H.R. 2208, 93d Congress, a bill "For the relief of Raymond W. Suchy, second lieutenant, United States Army (retired)."

This bill provides: "That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Second Lieutenant Raymond W. Suchy (numbered Z-2-475-343, United States Army, retired) of Shorewood, Wisconsin, the sum of \$28,915.79 in full settlement of all his claims against the United States for retirement benefits which accrued from March 23, 1945, to March 16, 1962, and which he failed to receive due to administrative error."

The records of the Department disclose the following facts: The claimant entered on extended active duty as a second lieutenant, Signal Corps, Army of the United States, on November 14, 1942. He served as an aircraft warning officer and as an administrative officer until his transfer to New Guinea in November 1944. On November 29, 1944, he was admitted to an Army hospital in New Guinea after he was observed performing his duties as a censor [REDACTED]

[REDACTED] He was medically evacuated to the United States on December 28, 1944, and he received extensive medical treatment and observation. He was certified to the Administrator of Veterans' Affairs as eligible for disability retired pay in the grade of second lieutenant, under the provisions of the Act of April 3, 1939 (53 Stat. 557) effective March 23, 1945, by reason of physical disability described as follows:

[REDACTED] Ordinary military adjustment, two weeks duty overseas.
[REDACTED]

By letter dated December 22, 1946, the claimant informed the Veterans' Administration that he did not wish to accept disability retired pay and requested that his name be "irrevocably" removed from the "retired pay list," and that no retirement pay benefits be permitted to accrue to him or any of his "possible heirs." Enclosed with the letter was a check in the amount of \$2,346.69 as reimbursement for all retired pay previously received by him. His mother later explained that his reason was that he did not want to be "reminded of the past."

In December 1946 and January 1947, the claimant's mother informed the Veterans Administration of the claimant's [REDACTED] and inquired as to what disposition would be made of the funds which he had declined to accept and retain, and whether provisions comparable to the establishment of a trust fund would be made for the safekeeping of the funds. The files of the Veterans' Administration, available to this Department, contain no copy of a reply to the inquiries.

However, in response to a letter from the claimant, the Veterans' Administration, on February 28, 1947, advised the claimant in pertinent part as follows:

" . . . your refusal to accept the benefits awarded by virtue of a War Department certification would not in itself affect or in any way invalidate the War Department's determination as to your entitlement to such benefits, or would it constitute a waiver of your rights over such determination. You have the right to cause your retirement pay to be discontinued for the present without jeopardizing your right to make a future claim for such payments."

On May 27, 1947, the Secretary of War advised the claimant, in pertinent part, as follows:

"Once an officer has been declared eligible to receive retirement pay benefits by the War Department, the certificate for retirement pay benefits cannot be withdrawn in the absence of evidence to show that the original determination of eligibility for retirement pay was incorrect. However, you have the right to waive the receipt of payments until such time as you so desire to receive retirement pay benefits again."

The records of this Department do not disclose the nature of the claimant's employment following his retirement in 1945 or his [REDACTED] during the intervening years.

On March 6, 1972, he filed a claim for payment of all past due retired pay and requested that his monthly payments be restored. His retired pay was restored effective March 1, 1972, and he was paid the sum of \$21,810.79 for the period March 17, 1962, through February 29, 1972. Payment for the period March 23, 1945, through March 16, 1962, in the amount of \$28,915.79 was, however, denied by the Comptroller General on the basis of the ten-year Statute of Limitations.

The Department of the Army is not opposed to the bill. Ordinarily the Department objects to the waiver of the Statute of Limitations if it appears that the Government will be prejudiced in developing the facts, or if the claimant does not make a compelling showing that the equities favor a waiver. In the present case, the Department is of the opinion that the Statute of Limitations should not be imposed as an obstacle to a complete repayment of all amounts which he repaid or declined to accept prior to 1962. The [REDACTED] of the claimant at the time of his election, and his substantive entitlement to the retired pay clearly indicate that the equities favor the grant of relief. Even if his [REDACTED] had improved after his initial rejection of his retired pay, the letters from the Veterans' Administration and this Department failed to put him on notice that a request for reinstatement of pay could be time barred. In fact, the letters clearly indicate an opposite result.

The cost of the bill, if enacted, will be \$28,915.79.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee.

Sincerely,

HOWARD H. CALLAWAY,
Secretary of the Army.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., April 2, 1973.

HON. PETER W. RODINO, Jr.,
*Chairman, Committee on the Judiciary,
House of Representatives.*

DEAR MR. CHAIRMAN: Reference is made to your letter dated February 7, 1973, requesting our views on H.R. 2208, a bill for the relief of Raymond W. Suchy, second lieutenant, United States Army (retired).

The bill would authorize and direct payment out of any money in the Treasury not otherwise appropriated, to Second Lieutenant Raymond W. Suchy (numbered Z-2-475-343, United States Army, retired) of Shorewood, Wisconsin, the sum of \$28,915.79 in full settlement of all his claims against the United States for retirement benefits which accrued from March 23, 1945, to March 16, 1962, and which the bill states he failed to receive due to administrative error.

The military records of Lieutenant Raymond W. Suchy (Army Serial No. O-503716, Social Security No. [REDACTED]) show that he served on active duty with the U.S. Army from November 14, 1942, to March 22, 1945, when he was relieved from active duty at Kennedy General Hospital, Memphis, Tenn., due to physical disability. He also served on active duty from July 18, 1945, to August 29, 1945, when he was relieved from active duty at Gardiner General Hospital, Chicago, Ill. Retirement pay was paid to Mr. Suchy by the Veterans' Administration in the amount of \$2,350.62, for the periods March 23, 1945, to July 17, 1945, and August 29, 1945, to November 30, 1946. In December 1946, Mr. Suchy returned \$2,346.69 of the \$2,350.62 in retirement pay he had received and apparently voluntarily renounced his right to further payments of retired pay. Mr. Suchy retained \$3.93 representing retired pay for one day, March 23, 1945.

The retired pay payments made to Mr. Suchy by the Veterans' Administration, which Mr. Suchy subsequently returned, were based on the pay of a second lieutenant with over 3 years' service. However, Mr. Suchy had less than 3 years' service and his retirement pay should have been computed at the rates of \$112.50 and \$135.00 rather than \$118.12 and \$141.75 as paid.

By letter dated March 6, 1972, Mr. Suchy submitted to the Retired Pay Division, U.S. Army Finance Support Agency, a claim for back retired pay and requested reinstatement of retired pay. His claim was transmitted to our Transportation and Claims Division, where it was first received on March 17, 1972, and on May 17, 1972, a settlement was issued in his favor in the amount of \$21,810.79 representing the amount due him for the period March 17, 1962, through February 29, 1972. That portion of Mr. Suchy's claim based on the period prior to March 17, 1962, more than 10 years prior to the first receipt of his claim in the General Accounting Office was barred by the act of October 9, 1940, 54 Stat. 1061, 31 U.S.C. 71a, which provides in pertinent part as follows:

(1) Every claim or demand * * * against the United States cognizable by the General Accounting Office * * * shall be forever barred unless such claim * * * shall be received in said office within ten full years after the date such claim first accrued * * *.

Mr. Suchy requested that we review the settlement of his claim, and indicated that he did not believe that the 1940 barring act should be applied in his case because he was not aware of that law until February 1972 and was reasserting a claim which was already established and voluntarily interrupted by him. In support of that contention he submitted a copy of a letter dated February 28, 1947, to him from a Veterans' Administration official in which it was stated in part that Mr. Suchy had the right to cause his retirement pay to be discontinued "without jeopardizing" his right to make a future claim for such payments.

By our decision B-176359, August 10, 1972, copy enclosed, we advised Mr. Suchy that the filing of a claim in the administrative office concerned does not meet the requirements of the 1940 barring act and, therefore, the fact that his application for retired pay was filed with the Veterans' Administration or the Department of the Army or, that he voluntarily renounced his right to such pay did not remove his claim from the operation of the barring act. We also advised him that while it is unfortunate that he was unaware of the barring act or that he may have been misinformed, we have no authority to make an exception to the statute, or to grant an extension of time within which claims may be filed in this Office. Thus, we informed Mr. Suchy that consideration of his claim for the period prior to March 17, 1962, is prohibited by law.

By letter dated August 10, 1972, we similarly advised the Honorable Glenn R. Davis, House of Representatives, the sponsor of H.R. 2208, who had expressed interest in Mr. Suchy's case.

It is our view that to grant the relief sought in H.R. 2208 would have the effect of waiving the 1940 barring act. This would establish an undesirable precedent for all affected persons to seek similar legislation in their favor and would lead eventually to the undermining of the salutary principle of limitation of time within which claims against the United States may be filed. While it is unfortunate that Mr. Suchy was unaware of the provisions of the barring act when he voluntarily renounced his right to receive retired pay, other persons who may have had valid claims for money due them which were not timely filed in this Office have been denied payment because of the barring act. We have generally recommended against enactment of legislation which would waive the barring act of 1940 and we do not recommend that H.R. 2208 be favorably considered.

Presumably, the amount shown in the bill was provided informally by Army personnel in response to an inquiry by Mr. Suchy and erroneously included the period July 18, 1945, to August 29, 1945, when he was on active duty and paid active duty pay and allowances for that period. Our computation of the amount due is as follows:

Period	Rate/month	Amount
Mar. 24 to July 17, 1945	\$112.50	\$427.50
July 18 to Aug. 29, 1945	112.50	1,128.75
Aug. 30, 1945 to June 30, 1946	135.00	9,450.00
July 1, 1946 to Apr. 30, 1952	140.40	4,914.00
May 1, 1952 to Mar. 31, 1955	148.82	5,655.16
Apr. 1, 1955 to May 31, 1958	157.75	7,182.98
June 1, 1958 to Mar. 16, 1962		
Total		28,758.49

If H.R. 2208 is to receive favorable consideration, there is attached a statement indicating suggested changes which we believe should be considered by your committee.

Sincerely yours,

PAUL G. DEMBLING,
Acting Comptroller General
of the United States.

○

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FORM OF DOCUMENT	CORRESPONDENTS OR TITLE	DATE	RESTRICTION
Report	House Report - Raymond W. Suchy (redacted copy)	4/25/1974	C

File Location:

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RAYMOND W. SUCHY, SECOND LIEUTENANT, UNITED STATES ARMY (RETIRED)

APRIL 25, 1974.—Committed to the Committee of the Whole House and ordered to be printed

Miss JORDAN, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 2208]

The Committee on the Judiciary to whom was referred the bill (H.R. 2208) for the relief of Raymond W. Suchy, second lieutenant, United States Army (retired), having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Page 1, line 6: Strike "(numbered Z 2 475 343, United States Army, retired)" and insert "United States Army, retired, (Army Serial Number O-503716, Social Security Number [REDACTED])".

Page 1, line 7: Strike "\$28,915.79" and insert "\$28,758.29".

Page 1, line 9: Strike "March 23, 1945, to" and insert "March 24, 1945 to July 17, 1945, and August 30, 1945 to".

Page 2, line 1: Strike "in excess of 10 per centum".

PURPOSE

The purpose of the proposed legislation as amended is to pay Raymond W. Suchy, a retired Army second lieutenant \$28,758.29 in full settlement of his claims for retirement benefits from March 23, 1945 to March 16, 1962, which he failed to receive due to administrative error.

STATEMENT

The sum referred to in the bill is the balance of amounts of retirement pay barred by the ten year statute of limitations which accrued prior to March 16, 1962.

Raymond W. Suchy began active duty as a Second Lieutenant on November 14, 1942. He served as an aircraft warning officer and

as an administrative officer until his transfer to New Guinea in November 1944. On November 29, 1944, he was admitted to an Army hospital in New Guinea after [REDACTED]

[REDACTED]. He was medically evacuated to the United States on Dec. 28, 1944, and he received extensive medical treatment and observation. He was certified to the Administrator of Veterans Affairs as eligible for disability retired pay in the grade of second lieutenant, under the provisions of the Act of April 3, 1939 (53 Stat. 557) effective March 23, 1945, by reason of physical disability as is outlined in the Army report.

By letter dated Dec. 22, 1946, he informed the Veterans Administration that he did not wish to accept disability retired pay and requested that his name be "irrevocably" removed from the "retired pay list," and that no retirement pay benefits be permitted to accrue to him or any of his "possible heirs." Inclosed with the letter was a check in the amount of \$2,346.69 as reimbursement for all retired pay previously received by him. His mother later explained that his reason was that he did not want to be "reminded of the past."

In December 1946 and January 1947 the claimant's mother informed the Veterans Administration of the claimant's [REDACTED] and inquired as to what disposition would be made of the funds which he had declined to accept and retain, and whether provisions comparable to the establishment of a trust fund would be made for the safe-keeping of the funds. The files of the Veterans Administration, available to this Department, contains no copy of a reply to the inquiries. However, in response to a letter from the claimant, the Veterans Administration on February 28, 1947, advised him:

. . . your refusal to accept the benefits awarded by virtue of a War Department certification would not in itself affect or in any way invalidate the War Department's determination as to your entitlement to such benefits, or would it constitute a waiver of your rights over such determination. You have the right to cause your retirement pay to be discontinued for the present without jeopardizing your right to make a future claim for such payments.

The War Department gave him similar advice later that year. On March 6, 1972, he filed a claim for payment of all past due retired pay and requested that his monthly payments be restored. His retired pay was restored effective March 1, 1972, and he was paid the sum of \$21,810.79 for the period March 17, 1962 through February 29, 1972. Payment for the period March 23, 1945, through March 16, 1962 in the amount of \$28,915.79 was, however, denied by the Comptroller General on the basis of the ten year statute of limitations. The General Accounting Office in its report to the committee on the bill opposed relief on the grounds that it does not favor bills waiving the ten year statute of limitations. However, it recommended amendments correcting the amount stated in the bill and the dates of the periods the retired officer was not paid retired pay. The computation made by the General Accounting Office of the amount due is as follows:

Period	Rate per month	Amount
Mar. 24 to July 17, 1945.....	112.50	\$427.50
July 18 to Aug. 29, 1945.....		
Aug. 30, 1945, to June 30, 1946.....	112.50	1,128.75
July 1, 1946, to Apr. 30, 1952.....	135.00	9,450.00
May 1, 1952, to Mar. 31, 1955.....	140.40	4,914.00
Apr. 1, 1955, to May 31, 1958.....	148.82	5,655.16
June 1, 1958, to Mar. 16, 1962.....	157.75	7,182.88
Total.....		28,758.29

The amendments recommended by the committee are those suggested by the General Accounting Office.

The Department of the Army has stated that it has no objection to relief in this instance. The Army stated:

The Department of the Army is not opposed to the bill. Ordinarily the Department objects to the waiver of the Statute of Limitations if it appears that the Government will be prejudiced in developing the facts, or if the claimant does not make a compelling showing that the equities favor a waiver. In the present case, the Department is of the opinion that the Statute of Limitations should not be imposed as an obstacle to a complete repayment of all amounts which he repaid or declined to accept prior to 1962. The [REDACTED] of the claimant at the time of his election, and his substantive entitlement to the retired pay clearly indicate that the equities favor the grant of relief. Even if his [REDACTED] had improved after his initial rejection of his retired pay, the letters from the Veterans' Administration and this Department failed to put him on notice that a request for reinstatement of pay could be time barred. In fact, the letters clearly indicate an opposite result.

The committee agrees that in equity this retired officer is entitled to the amount of retired pay actually withheld from his. It is recommended that the amended bill be considered favorably.

DEPARTMENT OF THE ARMY.
Washington, D.C., February 4, 1974.

HON. PETER W. RODINO, JR.,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of the Army with respect to H.R. 2208, 93d Congress, a bill "For the relief of Raymond W. Suchy, second lieutenant, United States Army (retired)."

This bill provides: "That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Second Lieutenant Raymond W. Suchy (numbered Z-2-475-343, United States Army, retired) of Shorewood, Wisconsin, the sum of \$28,915.79 in full settlement of all his claims against the United States for retirement benefits which accrued from

March 23, 1945, to March 16, 1962, and which he failed to receive due to administrative error."

The records of the Department disclose the following facts: The claimant entered on extended active duty as a second lieutenant, Signal Corps, Army of the United States, on November 14, 1942. He served as an aircraft warning officer and as an administrative officer until his transfer to New Guinea in November 1944. On November 29, 1944, he was admitted to an Army hospital in New Guinea after he was observed

He was medically evacuated to the United States on December 28, 1944, and he received extensive medical treatment and observation. He was certified to the Administrator of Veterans' Affairs as eligible for disability retired pay in the grade of second lieutenant, under the provisions of the Act of April 3, 1939 (53 Stat. 557) effective March 23, 1945, by reason of physical disability described as follows:

Ordinary military adjustment, two weeks duty overseas.

By letter dated December 22, 1946, the claimant informed the Veterans Administration that he did not wish to accept disability retired pay and requested that his name be "irrevocably" removed from the "retired pay list," and that no retirement pay benefits be permitted to accrue to him or any of his "possible heirs." Enclosed with the letter was a check in the amount of \$2,346.69 as reimbursement for all retired pay previously received by him. His mother later explained that his reason was that he did not want to be "reminded of the past."

In December 1946 and January 1947, the claimant's mother informed the Veterans Administration of the claimant's and inquired as to what disposition would be made of the funds which he had declined to accept and retain, and whether provisions comparable to the establishment of a trust fund would be made for the safekeeping of the funds. The files of the Veterans Administration, available to this Department, contain no copy of a reply to the inquiries.

However, in response to a letter from the claimant, the Veterans Administration, on February 28, 1947, advised the claimant in pertinent part as follows:

"... your refusal to accept the benefits awarded by virtue of a War Department certification would not in itself affect or in any way invalidate the War Department's determination as to your entitlement to such benefits, or would it constitute a waiver of your rights over such determination. You have the right to cause your retirement pay to be discontinued for the present without jeopardizing your right to make a future claim for such payments."

On May 27, 1947, the Secretary of War advised the claimant, in pertinent part, as follows:

"Once an officer has been declared eligible to receive retirement pay benefits by the War Department, the certificate for retirement pay

benefits cannot be withdrawn in the absence of evidence to show that the original determination of eligibility for retirement pay was incorrect. However, you have the right to waive the receipt of payments until such time as you so desire to receive retirement pay benefits again."

The records of this Department do not disclose the nature of the claimant's employment following his retirement in 1945 or his [REDACTED] during the intervening years.

On March 6, 1972, he filed a claim for payment of all past due retired pay and requested that his monthly payments be restored. His retired pay was restored effective March 1, 1972, and he was paid the sum of \$21,810.79 for the period March 17, 1962, through February 29, 1972. Payment for the period March 23, 1945, through March 16, 1962, in the amount of \$28,915.79 was, however, denied by the Comptroller General on the basis of the ten-year Statute of Limitations.

The Department of the Army is not opposed to the bill. Ordinarily the Department objects to the waiver of the Statute of Limitations if it appears that the Government will be prejudiced in developing the facts, or if the claimant does not make a compelling showing that the equities favor a waiver. In the present case, the Department is of the opinion that the Statute of Limitations should not be imposed as an obstacle to a complete repayment of all amounts which he repaid or declined to accept prior to 1962. The mental condition of the claimant at the time of his election, and his substantive entitlement to the retired pay clearly indicate that the equities favor the grant of relief. Even if his [REDACTED] had improved after his initial rejection of his retired pay, the letters from the Veterans' Administration and this Department failed to put him on notice that a request for reinstatement of pay could be time barred. In fact, the letters clearly indicate an opposite result.

The cost of the bill, if enacted, will be \$28,915.79.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee.

Sincerely,

HOWARD H. CALLAWAY,
Secretary of the Army.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., April 2, 1973.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to your letter dated February 7, 1973, requesting our views on H.R. 2208, a bill for the relief of Raymond W. Suchy, second lieutenant, United States Army (retired).

The bill would authorize and direct payment out of any money in the Treasury not otherwise appropriated, to Second Lieutenant Raymond W. Suchy (numbered Z-2-475-343, United States Army, re-

tired) of Shorewood, Wisconsin, the sum of \$28,915.79 in full settlement of all his claims against the United States for retirement benefits which accrued from March 23, 1945, to March 16, 1962, and which the bill states he failed to receive due to administrative error.

The military records of Lieutenant Raymond W. Suchy (Army Serial No. O-503716, Social Security No. [REDACTED]) show that he served on active duty with the U.S. Army from November 14, 1942, to March 22, 1945, when he was relieved from active duty at Kennedy General Hospital, Memphis, Tenn., due to physical disability. He also served on active duty from July 18, 1945, to August 29, 1945, when he was relieved from active duty at Gardiner General Hospital, Chicago, Ill. Retirement pay was paid to Mr. Suchy by the Veterans' Administration in the amount of \$2,350.62, for the periods March 23, 1945, to July 17, 1945, and August 29, 1945, to November 30, 1946. In December 1946, Mr. Suchy returned \$2,346.69 of the \$2,350.62 in retirement pay he had received and apparently voluntarily renounced his right to further payments of retired pay. Mr. Suchy retained \$3.93 representing retired pay for one day, March 23, 1945.

The retired pay payments made to Mr. Suchy by the Veterans' Administration, which Mr. Suchy subsequently returned, were based on the pay of a second lieutenant with over 3 years' service. However, Mr. Suchy had less than 3 years' service and his retirement pay should have been computed at the rates of \$112.50 and \$135.00 rather than \$118.12 and \$141.75 as paid.

By letter dated March 6, 1972, Mr. Suchy submitted to the Retired Pay Division, U.S. Army Finance Support Agency, a claim for back retired pay and requested reinstatement of retired pay. His claim was transmitted to our Transportation and Claims Division, where it was first received on March 17, 1972, and on May 17, 1972, a settlement was issued in his favor in the amount of \$21,810.79 representing the amount due him for the period March 17, 1962, through February 29, 1972. That portion of Mr. Suchy's claim based on the period prior to March 17, 1962, more than 10 years prior to the first receipt of his claim in the General Accounting Office was barred by the act of October 9, 1940, 54 Stat. 1061, 31 U.S.C. 71a, which provides in pertinent part as follows:

(1) Every claim or demand * * * against the United States cognizable by the General Accounting Office * * * shall be forever barred unless such claim * * * shall be received in said office within ten full years after the date such claim first accrued * * *.

Mr. Suchy requested that we review the settlement of his claim, and indicated that he did not believe that the 1940 barring act should be applied in his case because he was not aware of that law until February 1972 and was reasserting a claim which was already established and voluntarily interrupted by him. In support of that contention he submitted a copy of a letter dated February 28, 1947, to him from a Veterans' Administration official in which it was stated

in part that Mr. Suchy had the right to cause his retirement pay to be discontinued "without jeopardizing" his right to make a future claim for such payments.

By our decision B-176359, August 10, 1972, copy enclosed, we advised Mr. Suchy that the filing of a claim in the administrative office concerned does not meet the requirements of the 1940 barring act and, therefore, the fact that his application for retired pay was filed with the Veterans' Administration or the Department of the Army or, that he voluntarily renounced his right to such pay did not remove his claim from the operation of the barring act. We also advised him that while it is unfortunate that he was unaware of the barring act or that he may have been misinformed, we have no authority to make an exception to the statute, or to grant an extension of time within which claims may be filed in this Office. Thus, we informed Mr. Suchy that consideration of his claim for the period prior to March 17, 1962, is prohibited by law.

By letter dated August 10, 1972, we similarly advised the Honorable Glenn R. Davis, House of Representatives, the sponsor of H.R. 2208, who had expressed interest in Mr. Suchy's case.

It is our view that to grant the relief sought in H.R. 2208 would have the effect of waiving the 1940 barring act. This would establish an undesirable precedent for all affected persons to seek similar legislation in their favor and would lead eventually to the undermining of the salutary principle of limitation of time within which claims against the United States may be filed. While it is unfortunate that Mr. Suchy was unaware of the provisions of the barring act when he voluntarily renounced his right to receive retired pay, other persons who may have had valid claims for money due them which were not timely filed in this Office have been denied payment because of the barring act. We have generally recommended against enactment of legislation which would waive the barring act of 1940 and we do not recommend that H.R. 2208 be favorably considered.

Presumably, the amount shown in the bill was provided informally by Army personnel in response to an inquiry by Mr. Suchy and erroneously included the period July 18, 1945, to August 29, 1945, when he was on active duty and paid active duty pay and allowances for that period. Our computation of the amount due is as follows:

Period	Rate/month	Amount
Mar. 24 to July 17, 1945.....	\$112.50	\$427.50
July 18 to Aug. 29, 1945.....		
Aug. 30, 1945 to June 30, 1946.....	112.50	1,128.75
July 1, 1946 to Apr. 30, 1952.....	135.00	9,450.00
May 1, 1952 to Mar. 31, 1955.....	140.40	4,914.00
Apr. 1, 1955 to May 31, 1958.....	148.82	5,655.16
June 1, 1958 to Mar. 16, 1962.....	157.75	7,182.88
Total.....		28,758.29

If H.R. 2208 is to receive favorable consideration, there is attached a statement indicating suggested changes which we believe should be considered by your committee.

Sincerely yours,

PAUL G. DEMBLING,
*Acting Comptroller General
of the United States.*

Enclosures—2.

SUGGESTED CHANGES IN H.R. 2208

The amount shown on page 1, line 7 of the bill, "\$28,915.79," should be changed to "\$28,758.29."

The dates, "March 23, 1945, to March 16, 1962," shown on lines 9 and 10, page 1 of the bill, should be changed to read "March 24, 1945, to July 17, 1945, and August 30, 1945, to March 16, 1962."

The General Accounting Office claim file number Z-2-475-343, shown on line 6, page 1 of the bill should be eliminated and in its place inserted Mr. Suchy's Army serial number O-503716, and his Social Security number [REDACTED] to better identify him.

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Ninety-third Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the twenty-first day of January,
one thousand nine hundred and seventy-four*

An Act

For the relief of Raymond W. Suchy, second lieutenant, United States Army
(retired).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Second Lieutenant Raymond W. Suchy United States Army, retired, (Army Serial Number O-503716, Social Security Number 395-07-0969) of Shorewood, Wisconsin, the sum of \$28,758.29 in full settlement of all his claims against the United States for retirement benefits which accrued from March 24, 1945 to July 17, 1945, and August 30, 1945 to March 16, 1962, and which he failed to receive due to administrative error.

SEC. 2. No amount of the sum appropriated in the first section of this Act shall be paid to or received by any agent or attorney for services rendered in connection with this claim. Any person violating provisions of this section shall be fined not more than \$1,000.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*