

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

GEORGE H. NESTLER

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. G-1180

Decision No. G-1420

Appeal and objection from a Proposed Decision entered on October 10, 1979. No Oral Hearing Requested.

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Hearing on the Record held on OCT 8 1980

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FINAL DECISION

This claim in the amount of 85,456.25 Deutsche Marks against the Government of the German Democratic Republic, under Title VI of the International Claims Settlement Act of 1949, as amended by Public Law 94-542 (90 Stat. 2509), is based upon the loss of social security benefits from the German Democratic Republic.

The record indicates that claimant became a United States citizen on September 12, 1961.

In its Proposed Decision issued on October 10, 1979, the Commission denied claimant's claim on the ground that it had not been established that property belonging to the claimant had been the subject of a nationalization, expropriation or other taking by the German Democratic Republic. The Commission held that the fact that the Government of the German Democratic Republic does not pay social security benefits abroad is not a taking of property as that term is understood within the meaning of the Act and that such a restriction is an exercise of sovereign authority which does not give rise to a claim.

By letter dated October 23, 1979, objection was filed, through counsel. By subsequent letter dated April 29, 1980, counsel informed the Commission that claimant had worked, before World War II, for private institutions in Germany, that during

the war he was a member of the Armed Forces and that after the war he worked in the "East German area" for a number of years. Apparently the basis of the objection is either that amounts deposited by the claimant during his period of working in the German Democratic Republic were expropriated or that the refusal to pay benefits of social security to a non-resident constitutes an expropriation of property. Even if there were evidence that deposits made by the claimant to the program were taken by the German Democratic Republic, there is no evidence from which the Commission could conclude that this occurred after 1961 when claimant became a United States citizen and such deposits could for the first time be considered as property owned by a United States national. As to the second argument, the Commission has again considered the argument but continues in its view that for a country to restrict the payment of benefits of a social security program to residents of that country is not in violation of international law and does not constitute a valid claim under Public Law 94-542.

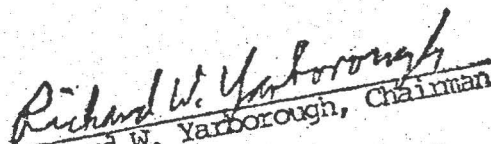
Therefore, the Commission must affirm its Proposed Decision as the Final Decision of the Commission.

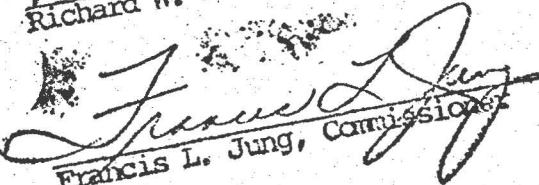
According, it is

ORDERED that the Proposed Decision be and it hereby is affirmed.

Dated at Washington, D.C.  
and entered as the Final  
Decision of the Commission.

OCT 8 1980

  
Richard W. Yarborough, Chairman

  
Francis L. Jung, Commissioner

This is a true and correct copy of the decision  
of the Commission which was entered as the final  
decision on OCT 8 1980

  
Executive Director

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IN THE MATTER OF THE CLAIM OF

GEORGE H. NESTLER

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Claim No. G-1180

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PROPOSED DECISION

This claim in the amount of 85,456.25 Deutsche Marks against the Government of the German Democratic Republic, under Title VI of the International Claims Settlement Act of 1949, as amended by Public Law 94-542 (90 Stat. 2509), is based upon the loss of social security benefits from the German Democratic Republic.

The record indicates that claimant became a United States citizen on September 12, 1961.

Under section 602, Title VI of the Act the Commission is given jurisdiction as follows:

"The Commission shall receive and determine in accordance with applicable substantive law, including international law, the validity and amounts of claims by nationals of the United States against the German Democratic Republic for losses arising as a result of the nationalization, expropriation, or other taking of (or special measures directed against) property, including any rights or interests therein, owned wholly or partially, directly or indirectly, at the time by nationals of the United States whether such losses occurred in the German Democratic Republic or in East Berlin. . ."

Claimant states that he had worked in what is now the German Democratic Republic for almost thirty years and had accrued social security benefits through his employment there. After the close of World War II, claimant went to West Berlin where he lived until October 1954, when he left West Germany for the United States. Claimant further states that for his employment of approximately 1 1/2 years in West Germany, he has received the "Auslandsrente" (a pension paid abroad) from the West German government. He has not, however, received the "Inlandsrente" (pension paid to residents inside West Germany), which the West


German government would pay if he had continued to live in that country. Claimant asserts that he is entitled to social security payments from the German Democratic Republic for the years spent working in the area of Germany that is now the German Democratic Republic.

Based upon the information submitted by the claimant, the Commission finds that there has been no property belonging to claimant which was subject to a nationalization, expropriation or other taking by the German Democratic Republic as required for compensation under section 602 of the Act. The fact that the government of the German Democratic Republic does not pay social security benefits abroad is not a taking of property as that term is understood within the meaning of the Act. Many countries, including West Germany, have limited or restricted payments to residents of the paying country, and such restriction is an exercise of sovereign authority which does not give rise to a claim.

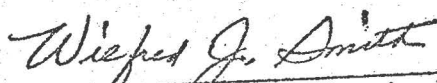
For the above cited reasons, the claim must be and hereby is denied.

The Commission finds it unnecessary to make determinations with respect to other elements of this claim.

Dated at Washington, D.C.  
and entered as the Proposed  
Decision of the Commission.

  
Richard W. Yarborough, Chairman

OCT 10 1979

  
Wilfred J. Smith, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5 (e) and (g), as amended).

At any time after Final Decision has been issued on a claim, or a Proposed Decision has become the Final Decision on a claim, but not later than 60 days before the completion date of the Commission's affairs in connection with this program, a petition to reopen on the ground of newly discovered evidence may be filed. (FCSC Reg., 45 C.F.R. 531.5 (1), as amended).