

# Michigan Law Review

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Volume 56 | Issue 1

---

1957

## Administrative Law - Judicial Control - Veterans Administration's Findings of Law and Fact Are Not Conclusvie in Government's Suit to Recover Sums Allegedly Due From Veteran

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### Recommended Citation

James M. Porter S.Ed., *Administrative Law - Judicial Control - Veterans Administration's Findings of Law and Fact Are Not Conclusvie in Government's Suit to Recover Sums Allegedly Due From Veteran*, 56 MICH. L. REV. 115 (1957).

Available at: <https://repository.law.umich.edu/mlr/vol56/iss1/6>

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## RECENT DECISIONS

ADMINISTRATIVE LAW—JUDICIAL CONTROL—VETERANS ADMINISTRATION'S FINDINGS OF LAW AND FACT ARE NOT CONCLUSIVE IN GOVERNMENT'S SUIT TO RECOVER SUMS ALLEGEDLY DUE FROM VETERAN—An action was brought by the United States to recover sums of money paid to a veteran as an employment readjustment allowance. It was claimed that the defendant was not entitled to the money because of his misstatement of earnings. Prior to this action, an administrative finding that the defendant had knowingly received the allowance contrary to law and was obliged to return it was approved by the Administrator of Veterans' Affairs. The government maintained that section 705 of the Servicemen's Readjustment Act required that the administrator's findings of law and fact be conclusive and binding on the court. The federal district court, *held*, complaint dismissed with prejudice. It was not the congressional intent that the administrator's findings should have retroactive finality when the government is seeking the recovery of pecuniary benefits already received by the veteran. *United States v. Owens*, (E.D. Ark. 1957) 147 F. Supp. 309.

The statutory language of section 705 of the Servicemen's Readjustment Act is sweeping and unequivocal.<sup>1</sup> In general, it prohibits the judicial review of findings of law and fact made by the Administrator of Veterans' Affairs.<sup>2</sup> While constitutionality of this section has been upheld by those courts that have had occasion to consider it,<sup>3</sup> in each case the petitioner was a veteran seeking judicial review of an administrative decision denying him right to future benefits. It is well recognized that since Congress may place conditions upon federal gratuities such as veterans' benefits, it may also place in an administrative agency the ultimate power to determine the validity of claims for such benefits.<sup>4</sup> The courts have almost uniformly respected the administrator's findings under these circumstances.<sup>5</sup>

<sup>1</sup> 48 Stat. 9 (1933), 38 U.S.C. (1952) §705: "All decisions rendered by the Administrator of Veterans' Affairs . . . shall be final and conclusive on all questions of law and fact, and no other official or court of the United States shall have jurisdiction to review by mandamus or otherwise any such decision." In that part of the legislation concerned with the duties, powers and functions of the Veterans Administration an almost identical provision appears. 54 Stat. 1197 (1940), 38 U.S.C. (1952) §11a-2.

<sup>2</sup> This type of provision is occasionally found in federal legislation creating administrative agencies with quasi-judicial functions. The language of the statute may vary from "final," "final and conclusive" to the language used in §705, which seems unmistakably to withdraw the jurisdiction of the courts. For similar federal statutes, and the judicial reaction to them, see DAVIS, ADMINISTRATIVE LAW §§238, 239 (1951).

<sup>3</sup> *Barnett v. Hines*, (D.C. Cir. 1939) 105 F. (2d) 96, cert. den. 308 U.S. 573 (1939); *Commers v. United States*, (9th Cir. 1947) 159 F. (2d) 248, cert. den. 331 U.S. 807 (1947).

<sup>4</sup> *Smith v. United States*, (8th Cir. 1936) 83 F. (2d) 631; *Barnett v. Hines*, note 3 supra; *Commers v. United States*, note 3 supra.

<sup>5</sup> *United States ex rel. Farmer v. Thompson*, (4th Cir. 1953) 203 F. (2d) 947; *Hahn v. Gray, Jr.*, (D.C. Cir. 1953) 203 F. (2d) 625; *Snauffer v. Stimson*, (D.C. Cir. 1946) 155 F. (2d) 861. But cf. *Siegel v. United States*, (E.D. N.Y. 1949) 87 F. Supp. 555, where court held the findings were not reviewable but that it could order a rehearing by the administrator.

A substantially different issue arises when the veteran has already received the benefits and the government seeks to recover them, asserting that the court is bound by the administrator's finding that the veteran now owes the government. A few courts, under these circumstances, have acknowledged that they were obliged by section 705 not to review the findings, and therefore gave judgment for the government.<sup>6</sup> The court in the principal case, recognizing that such a result might raise a serious constitutional question,<sup>7</sup> adopted a more liberal interpretation.<sup>8</sup> Its ruling that the section in question prohibited judicial review only when the *prospective* finality of the administrator's findings was challenged, and not when the government sought recovery of money, has judicial support.<sup>9</sup> Similar prohibitions in other federal legislation have not prevented judicial review when the courts felt review was desirable.<sup>10</sup> That the facts of this case merited such an interpretation of the statute cannot be doubted. To assume that Congress intended that section 705 should enable the government, by means of an informal hearing, to create for itself an invulnerable cause of action for the recovery of gratuities paid to a veteran is inconsistent with the beneficent purpose of the legislation establishing veterans' benefits.<sup>11</sup> The dilemma posed by the unequivocal language of the statute on the one hand, and the congressional intent on the other, is amicably resolved in favor of the latter when it appears that only slight inconvenience results to the government from such an interpretation. By producing proper evidence in court, the government can recover the sums paid without a possible deprivation of the individual's constitutional rights.

James M. Porter, S. Ed.

<sup>6</sup> *United States v. Perry*, (E.D. N.C. 1956) 141 F. Supp. 443; *United States v. Gudewicz*, (E.D. N.Y. 1942) 45 F. Supp. 787; *In re Rosa's Estate*, 16 N.Y.S. (2d) 285, 172 Misc. 808 (1939).

<sup>7</sup> At p. 314, the court quoted the opinion in *Hormel v. United States*, (S.D. N.Y. 1954) 123 F. Supp. 806 at 810: "... the Government's construction . . . raises the serious question whether the Fifth Amendment would not invalidate a law which would permit the Government to recover a judgment against a citizen without giving him an opportunity to challenge the bare assertion of an administrative officer that money was due and owing. . . ."

<sup>8</sup> When the constitutionality of a statute is in doubt the federal courts will first determine "whether a construction of the statute is fairly possible by which the question may be avoided." *Crowell v. Benson*, 285 U.S. 22 at 62 (1932). *American Communications Assn., CIO, v. Douds*, 339 U.S. 382 (1949), rehearing den. 339 U.S. 990 (1950). See also, comment, 53 *Col. L. Rev.* 633 (1953).

<sup>9</sup> *Hormel v. United States*, note 7 *supra*. See also *United States v. Gibson*, (9th Cir. 1953) 207 F. (2d) 161.

<sup>10</sup> Whether the courts will review findings of federal agencies in the face of a statute that seems to preclude review is not necessarily determined by the literal language employed in the statute, but will depend on the facts of each case. For a discussion of the Supreme Court's position in this area, see Davis, "Unreviewable Administrative Action," 15 *F.R.D.* 411 at 433-446 (1954). See also Schwartz, "A Decade of Administrative Law: 1942-1951," 51 *Mich. L. Rev.* 775 at 840-844 (1953).

<sup>11</sup> See principal case at 314.