



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

B-177932

May 21, 1973

30978

Mr. Willie T. McDuff
216 Lee Street
North Pekin, Illinois 61554

Dear Mr. McDuff:

We refer to your letter dated June 8, 1972, to the Finance Center, U.S. Army, Indianapolis, Indiana, in which you requested reimbursement in the amount of \$683, representing the cost of a flight on a commercial airplane from the United States to Bangkok, Thailand, by the widow of your deceased son, SP5 Stephen T. McDuff, U.S. Army. By our Transportation and Claims Division settlement of October 19, 1972, your claim was disallowed on the grounds that there is no statutory authority for reimbursement under the circumstances involved in this case. The Survivor Assistance Officer at the T/4 Robert E. Ward USAR Center, Peoria, Illinois, by letter dated January 16, 1973, written on your behalf, requested that the settlement be reconsidered.

The record shows that on December 11, 1971, your son, Stephen Troy McDuff, a member of the United States Army, died from a gunshot wound.

In May 1972, Kongari McDuff, the decedent's widow, pleaded guilty to a charge of voluntary manslaughter in the Circuit Court of Meade County, Kentucky, in connection with her husband's death. On May 24, 1972, the Court fixed a sentence of 10 years in the Kentucky State Reformatory but placed defendant on probation subject to her compliance with certain conditions including the requirement that she return to Thailand within a reasonable time. You state that due to the short time available and the inability to obtain an early port call, she flew via commercial airline at the expense of you and your wife, to Bangkok, Thailand. You contend that Kongari McDuff was entitled to one move to her choice of location at Government expense and, therefore, that you are entitled to reimbursement for the cost of her flight to Bangkok.

Section 406(f) of title 37, U.S. Code, provides that under regulations prescribed by the Secretary concerned, transportation for dependents, baggage, and household effects of a member is authorized if he dies while entitled to basic pay. Pursuant to this authority, paragraph 17153-1 of the Joint Travel Regulations provides that transportation of dependents is authorized to a member's official home of record, to the residence of his dependents, or to such other location

718323 091917

B-177932

as may be determined in advance or subsequently approved by the official designated by administrative regulations of the service concerned when dependents receive official notice that the member is dead. Paragraph M7151-4 of the regulations defines transportation for this purpose to include transportation in kind or reimbursement or a monetary allowance in lieu of transportation.

In 34 Comp. Gen. 103, 104 (1954) we stated that:

It uniformly has been held that it is against public policy to permit the payment by the Government of arrears of pay, compensation or other benefits to an heir or beneficiary who feloniously kills the person upon whose death such payments become due.

We believe that reimbursement for travel authorized under 37 U.S. Code 406(f) upon the death of a member clearly comes within the meaning of "other benefits" as used in 34 Comp. Gen. 103, supra.

As to whether Kongari McDuff feloniously killed her husband we turn to Kentucky law. Section 431.060 of Baldwin's Kentucky Revised Statutes Annotated states that an offense punishable by death or confinement in the penitentiary is a felony. Section 435.020 states that a person who commits voluntary manslaughter shall be confined in the penitentiary for not less than two nor more than twenty-one years. It is thus clear that by pleading guilty to a charge of voluntary manslaughter Kongari McDuff admitted to having feloniously killed her husband.

It is apparent therefore that Kongari McDuff is not entitled to a travel allowance for her trip to Bangkok as she feloniously killed her husband. And, there is no authority to reimburse you for providing her with transportation. We have no doubt as to our good faith in paying for your daughter-in-law's transportation. However, there is no provision of law which permits reimbursement to you under the circumstances present in this case.

While payment was made to you and your wife of a six-months' death gratuity because Kongari McDuff was not eligible as the surviving widow in view of her felonious killing of the member, such payment was made under the provisions of 10 U.S.C. 1477. That statute provides for payment of that gratuity to the surviving widow or, if there is no widow, to the other survivors in the designated order of precedence. Such statute provides no basis to reimburse you for the transportation involved.

B-177932

Accordingly, the denial of reimbursement for air travel of
Kongeri McDuff subsequent to her husband's death, is sustained.

Sincerely yours,

PAUL G. DEMBLING

For the Comptroller General
of the United States