

DECISION

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

51021

FILE: B-184224

DATE: AUG 28 1975

MATTER OF: Claim for Death Gratuity - Charles L.
Day, Jr., USA, deceased.

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DIGEST: Mother's claim for payment of 50 percent of six months death gratuity paid to father in addition to the 50 percent she had already received, upon death of son, is denied because although DA Form 41 dated August 27, 1973, designated her as beneficiary, DA Form 41 dated May 8, 1974, designated no beneficiary and the later form is controlling, and in such case 10 U.S.C. 1477(a)(4) requires that parents share equally. Also, facts that father had not supported son and that report of casualty form showed mother as beneficiary would not affect father's entitlement.

This action is in response to a letter dated June 2, 1975, from Mrs. Christine Day, constituting an appeal from our Transportation and Claims Division settlement dated April 8, 1975, which denied her claim for the remaining 50 percent of the six months' death gratuity due upon the death of her son, Charles L. Day, Jr., USA, SSN 329-50-5765.

The record shows that on August 27, 1973, Charles L. Day, Jr., completed a DA Form 41 (Record of Emergency Data), and designated his mother, Christine Day, as beneficiary for 100 percent of the six months' death gratuity payment. On May 8, 1974, he executed another DA Form 41 on which the word "none" appears in the space provided for designation of the death gratuity beneficiary. Charles L. Day, Jr., while on active duty in the United States Army, died in Korea on December 14, 1974, leaving no spouse or children. On January 23, 1975, the Army paid Mrs. Day \$1,222.20, an amount equaling 50 percent of the total death gratuity. The Army forwarded the claim of Mrs. Day and Mr. Charles L. Day, Sr. (the deceased member's father) for the remaining 50 percent of the death gratuity to our Transportation and Claims Division as doubtful claims.

The Transportation and Claims Division considered the second DA Form 41 to represent Charles L. Day, Jr.'s final intent. Therefore, by settlement dated April 8, 1975, the Transportation and Claims Division disallowed Mrs. Day's claim for the remaining 50 percent of the death gratuity and, on the same date, authorized payment of that 50 percent to Charles L. Day, Sr., in accordance

with 10 U.S.C. 1477(a) (1970) which provides that when no beneficiary is designated and the deceased leaves no surviving spouse or children, the death gratuity is payable to both parents in equal shares.

Mrs. Day contends that the Transportation and Claims Division's reliance on the second DA Form 41 is incorrect, especially in light of the fact that the earlier form was never destroyed. She also bases her claim for 100 percent of the death gratuity on DD Form 1300 (Report of Casualty), which reports only the beneficiary designations which appear on the August 27, 1973 DA Form 41. Finally, Mrs. Day contends that Charles L. Day, Sr., is not entitled to any portion of the death gratuity because he had not supported his son for many years.

This Office has long held that the designation of a beneficiary for the six months' gratuity is the statement of a member's desires which he wishes to be carried into effect after his death. Therefore, the designation is in the nature of a will and the same rules of construction used in connection with wills should be applied to that designation. See 32 Comp. Gen. 249 (1952). Thus, in accordance with the general rule that the latest will controls, the later DA Form 41 must be considered as the controlling form in this case.

The fact that the earlier DA Form 41 was not destroyed does not affect the validity and the operation of the later DA Form 41 since the later form, in effect, revokes the earlier form.

As Mrs. Day indicates, the DD Form 1300 (Report of Casualty), prepared December 23, 1974, does state that she is the beneficiary for the death gratuity. However, it appears that that information was mistakenly entered on the official casualty report, based on the beneficiary designation made on the August 23, 1973 DA Form 41 rather than the later May 8, 1974 form. In any event, it is the May 8, 1974 DA Form 41, signed by Charles L. Day, Jr., which controls the designation of beneficiaries and not the Report of Casualty form prepared after his death.

Concerning Mrs. Day's contention that Charles L. Day, Sr., is not entitled to a share of the death gratuity because he had not supported his son, it is stated that the death gratuity is payable in accordance with the provisions of 10 U.S.C. 1477 (1970). Subsection (a)(4) of that section requires that, in the circumstances of this case, the gratuity be paid in equal shares to the deceased member's parents. The fact that Charles L. Day, Sr., may not have supported his son for many years would not affect his entitlement to

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a share of the gratuity since there is nothing in the law or the legislative history to indicate an intent by the Congress to deny payment of the gratuity to a natural father who had abandoned the support of the serviceman in the absence of another person to qualify as his counterpart in loco parentis. There does not appear to have been such other person in this case. In any event, that fact alone would not entitle Mrs. Day to the father's share of the death gratuity.

Therefore, in this case the deceased member's parents, Mrs. Christine Day and Mr. Charles L. Day, Sr., were each entitled to 50 percent of the death gratuity, and Mrs. Day is not entitled to Mr. Day's share. Accordingly, the action taken by the Transportation and Claims Division in disallowing Mrs. Day's claim for an additional 50 percent of the gratuity is hereby sustained.

R. F. KELLER

Acting Comptroller General
of the United States