

DOCUMENT RESUME

03825 - [B2974224]

[Disposition of Unpaid Compensation]. B-189525. October 18, 1977. 4 pp.

Decision re: Lillian E. Clark Engs; by Robert R. Keller, Acting Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation (305).

Contact: Office of the General Counsel: Civilian Personnel.

Budget Function: General Government: Central Personnel Management (805).

Organization Concerned: Veterans Administration: VA Hospital, Coatesville, PA.

Authority: 31 U.S.C. 71a. 5 U.S.C. 5582. 5 U.S.C. 61f. B-145563 (1961).

E. D. Shacklett, Hospital Director, Veterans Administration Hospital, Coatesville, Pennsylvania, requested a decision as to the disposition of unpaid compensation owed to a former employee at the time of her death in 1958. The mother of the deceased claimed the unpaid compensation, but the claim of the widower of the deceased had priority over the mother. The mother's claim was denied since the deceased was married at the time of her death and, even though the widower allegedly deserted the deceased and did not file a claim within 10 years, his claim had priority. The claims filed by the deceased's daughters more than 10 years after the claim arose were disallowed because they were barred by the statute of limitations. (Author/SC)

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DECISION



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

FILE: B-189525

DATE: October 18, 1977

MATTER OF: Lillian E. Clark Engs (Deceased) - Disposition of Unpaid Compensation

DIGEST: Mother of deceased employee of VA Hospital claimed unpaid compensation owed to deceased at date of death on May 12, 1958. 5 U.S.C. § 61f (1958) provided that claim of widower of deceased had priority over mother. Claim was denied since deceased was married at time of her death and, even though widower allegedly deserted deceased and did not file claim with GAO within 10 years, his claim had priority. Claims filed by daughters more than 10 years after claim arose were disallowed because they were barred by 31 U.S.C. § 71a. Settlements were correct and are affirmed.

This action is in response to the letter of June 16, 1977, from E.D. Shacklett, M.D., Hospital Director, Veterans Administration (VA) Hospital, Coatesville, Pennsylvania, requesting a decision in connection with the disposition of unpaid compensation owed to Mrs. Lillian E. Clark Engs, a former employee of the hospital, at the date of her death.

The record shows that Lillian E. Clark Engs died on May 12, 1958. Her unpaid compensation on the date of her death amounted to \$811.77. On October 13, 1960, the mother of the deceased employee, Mrs. Fannie Clark, filed a Standard Form 1155 (Claim for Unpaid Compensation of Deceased Civilian Employee). She also submitted a form showing she was Administratrix of the estate of Lillian E. Clark Engs. The SF 1155 showed that the deceased was survived by her mother - Mrs. Fannie Clark, her husband - Mr. John Engs, and two children - Claretha Fannie Clark Engs and Fredericka Athena Clark Engs. The claim was referred to our Claims Division by the VA for settlement.

On December 8, 1960, our Claims Division determined that the matter should be held in abeyance pending receipt of a claim for the unpaid compensation from Mr. John Engs, the decedent's widower, since under section 1 of the Act of August 3, 1950, now codified at 5 U.S.C. § 5582, he had a prior claim to the money. On April 13, 1971, our Claims Division received a claim on behalf of Fredericka Athena Clark Engs and Claretha Fannie Clark Engs for the unpaid compensation due Mrs. Lillian E. Clark Engs. Our Claims

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Division, in its action of October 29, 1973, denied these claims on the basis that the claims had not been filed within 10 years after the death of the decedent and, therefore, the claims were barred by the 10-year statute of limitations under the provisions of the Act of October 9, 1940, 31 U.S.C. § 71a (1970).

The June 16, 1977, letter from the VA Hospital Director is, in effect, a request for reconsideration of the above-outlined actions taken by our Claims Division.

At the time of Mrs. Lillian E. Clark Engs' death, section 61f, title 5, United States Code (1958), provided that:

"In order to facilitate the settlement of the accounts of deceased civilian officers and employees of the Federal Government and of the government of the District of Columbia (including wholly owned and mixed-ownership Government corporations) all unpaid compensation due such an officer or employee at the time of his death shall be paid to the person or persons surviving at the date of death, in the following order of precedence, and such payment shall be a bar to recovery by any other person of amounts so paid:

"First, to the beneficiary or beneficiaries designated by the officer or employee in writing to receive such compensation filed with the Government agency in which the officer or employee was employed at the time of his death, and received by such agency prior to the officer's or employee's death;

"Second, if there be no such beneficiary, to the widow or widower of such officer, or employee;

"Third, if there be no beneficiary or surviving spouse, to the child or children of such officer or employee, and descendants of deceased children, by representation;

"Fourth, if none of the above, to the parents of such officer or employee, or the survivor of them;

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"Fifth, if there be none of the above, to the duly appointed legal representative of the estate of the deceased officer or employee, or if there be none, to the person or persons determined to be entitled thereto under the laws of the domicile of the deceased officer or employee."

Under the above-quoted statute the unpaid compensation would have to be paid to John Engs in preference to the claims of Fannie Clark, Claretha Fannie Clark Engs, or Fredericka Athena Clark Engs. Although it is argued that John Engs had deserted the decedent in the early 1950's, no proof has been presented showing that he had either divorced the decedent or predeceased her. We have held that when a person appears to have been living at a certain time, the presumption, in the absence of proof to the contrary, is that he is still alive. We have proceeded in cases of this nature on the basis that the widow or widower may be alive unless the death is established or is judicially determined by a court of competent jurisdiction. See B-145563, July 19, 1961, and cases cited therein. Therefore, the action taken by, our Claims Division on December 8, 1960, disallowing the claim made by Fannie Clark on October 13, 1960, was correct.

Moreover, the claim made by Fannie Clark on October 13, 1960, was the only claim for unpaid compensation owed to Lillian E. Clark Engs received in our Office within 10 years following her death. If, at the time of filing of the claim on October 13, 1960, the widower John Engs was alive, then such claim would be without effect. This is so because at the time of the filing on October 13, 1960, Mrs. Fannie Clark had no right to the unpaid compensation, a widower taking precedence over a mother or administratrix in the settlement of decedents' accounts under 5 U.S.C. § 61f (1958). Unless it could be established that John Engs did not survive the decedent or that he was divorced from the decedent at her death, the October 13, 1960, claim, a claim on behalf of Fannie Clark, Claretha Fannie Clark Engs, and Fredericka Athena Clark Engs, would be without effect, and any claims filed by them after May 12, 1968, would be forever barred since they would not have been received by our Office within 10 years after the claim first accrued as provided in 31 U.S.C. § 71a. See B-145563, *supra*. Therefore, the Claims Division actions of October 29, 1973, denying the claims of Fredericka Athena Clark Engs and Claretha Fannie Clark Engs on the basis of the 10-year statute of limitations were correct.

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For the above reasons, the actions of our Claims Division taken on December 8, 1960, and October 29, 1973, are affirmed. Since a claim has not been received on behalf of John Enga within 10 years after the death of Lillian E. Clark Enga, no payment of unpaid compensation owed to Lillian E. Clark Enga may now be made and all future claims are precluded by 31 U.S.C. § 71a.

Am. K. M.
Acting Comptroller General
of the United States