

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

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FILE: B-209076**DATE:** August 25, 1983**MATTER OF:** Kenneth W. Mitchell (Deceased)

DIGEST: Where several women, each purporting to be the widow of a deceased member of an Armed Force, submit conflicting claims for entitlement to the death gratuity due under 10 U.S.C. §§ 1475-1480 (1976), and there is a sufficient basis in the record to support a finding that only one claimant is the surviving spouse, her claim will be allowed to the preclusion of all others. Although Louisiana law permits a good-faith putative spouse to take an equal share in the civil effects of a putative marriage, she is not entitled under the Federal statute to a portion of the death gratuity as a surviving spouse.

Roberta T. Mitchell appeals the settlement of our Claims Group with regard to the payment of the death gratuity due the survivor of Petty Officer Kenneth W. Mitchell, USN (deceased). Her claim was denied on the grounds that she had not been legally married to the decedent and, therefore, that she was not the surviving spouse entitled to the death gratuity pursuant to 10 U.S.C. §§ 1475-1480 (1976). For the following reasons the action of the Claims Group must be sustained.

During the course of 8 years, Petty Officer Mitchell had been married a total of eight times. Originally married in May 1974, he left his first wife and married another woman in November 1975, 2 months before the divorce of his first marriage became final. Then followed a sequence of marriages.

On October 15, 1979, Petty Officer Mitchell married his fifth wife without any legal impediment because his divorce from his fourth wife became final 1 month earlier. He married his sixth wife, Bernadette Smith Mitchell, on June 7, 1980, in Louisiana. He was not divorced from his fifth wife until April 20, 1981.

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He then married his seventh wife, Shirley Stafford Mitchell, on May 3, 1981, in Florida, and his eighth wife, Roberta Thomas Mitchell, on April 16, 1982, in Louisiana. There is no evidence in the record of a divorce decree from any of the last three marriages.¹

Petty Officer Mitchell died on May 9, 1982, approximately 3 weeks after marrying Roberta Mitchell. Claims for payment of the death gratuity had been subsequently made by Bernadette Mitchell, Shirley Mitchell, and Roberta Mitchell, each as widow of the decedent. Our Claims Group received this case from the Commander of the Naval Military Personnel Command, Department of the Navy, Washington, D.C. The Claims Group determined that the seventh wife, Shirley Mitchell, was the legal spouse and thus the beneficiary of the death gratuity. The claims of Bernadette Mitchell and Roberta Mitchell were denied. Roberta Mitchell has requested reconsideration of the action taken on her claim.

Under 10 U.S.C. §§ 1475-1480, the survivor of a member of an Armed Force who dies while on active duty is entitled to a death gratuity equal to 6 months' pay at the rate to which the decedent was entitled at his death, except that the gratuity may not exceed \$3,000. Section 1477(a) provides that payment shall be made to the living survivor highest on a list which begins with the "surviving spouse."

In determining who is legally the surviving spouse for the purpose of entitlement to the death gratuity, we may immediately exclude from consideration the

¹ Relevant dates of the marriages and divorces of Petty Officer Kenneth W. Mitchell:

<u>WIFE</u>	<u>DATE OF MARRIAGE</u>	<u>DATE OF DIVORCE</u>
No. 1	May 25, 1974	January 24, 1976
No. 2	November 13, 1975	No evidence of dissolution
No. 3	February 4, 1976	June 4, 1976
No. 4	September 9, 1977	September 11, 1979
No. 5	October 15, 1979	April 20, 1981
No. 6	June 7, 1980	No evidence of dissolution
No. 7	May 3, 1981	No evidence of dissolution
No. 8	April 16, 1982	No evidence of dissolution

first, third, fourth, and fifth wives because they each obtained a divorce prior to Petty Officer Mitchell's death. Due to the existing prior marriage with the first wife, the decedent's marriage to the second wife in Florida is considered void ab initio. Burger v. Burger, 166 So.2d 433, 435 (Fla. 1964). Thus, the second woman whom the decedent married may be excluded from consideration since she was never his legal spouse.

As to the sixth wife, Bernadette Mitchell, her marriage to the decedent is void under the law of Louisiana, the state where the marriage occurred and the couple resided. She married him prior to his divorce from his fifth wife, his legal spouse at that time. Under Louisiana law, an undissolved prior marriage renders a subsequent marriage ceremony in Louisiana null and void. Beebe v. Moormack Gulf Lines, 59 F.2d 319, 320 (5th Cir.), cert. denied, 287 U.S. 597 (1932). Furthermore, the subsequent marriage may be impeached not only by either spouse but also by any other party in interest. Clark v. Clark, 192 So.2d 594, 597 (La. Ct. App. 3d Cir. 1966).

Unlike Roberta Mitchell who contends that she is entitled to a share of the death gratuity on the grounds that she was a good-faith putative spouse, Bernadette Mitchell may not rely on a similar argument because she became aware of some of the decedent's previous marriages after he left her but prior to his death. Thus, Bernadette Mitchell is precluded from entitlement to the death gratuity.

The two remaining claims to be considered are those of the seventh wife, Shirley Mitchell, and the eighth wife, Roberta Mitchell. We have frequently held that where there is substantial doubt that a claimant is entitled to payment as a legal widow, no payment will be made until such doubt is removed. B-176962, March 8, 1974; B-148471, April 12, 1962. In such cases of conflicting claims, we generally require either evidence sufficient to allow one claim and deny all others or a judicial determination by a court of competent jurisdiction establishing entitlement. Matter of Dumol, B-207214, November 4, 1982; Matter of Paradise, B-204367, April 6, 1982.

Based on the facts in the record, there is a sufficient basis to support a finding that Shirley Mitchell is the surviving legal widow of the decedent. The record establishes that on the date of Shirley Mitchell's marriage to Petty Officer Mitchell, all of his prior marriages either had ended in a divorce decree or were null from the beginning. The date of the judgment dissolving the marriage with the fifth wife was April 20, 1981, approximately 2 weeks before he married Shirley Mitchell. His second and sixth marriages, which were his only undissolved marriages at that time, were null under applicable state law. Thus, there existed no legal impediment to Petty Officer Mitchell's marriage to Shirley Mitchell.

There is nothing in the record to show the existence of a divorce decree dissolving the marriage between the decedent and Shirley Mitchell. The lack of evidence of a divorce does not conclusively establish that a divorce had never been granted. Nonetheless, in view of the fact that claimant Roberta Mitchell has been unable with the aid of counsel to furnish proof of such divorce necessary to establish the legality of her purported marriage, the burden should not be on Shirley Mitchell to prove the nonoccurrence of a divorce.

Since Petty Officer Mitchell was legally married to Shirley Mitchell, his marriage to Roberta Mitchell was void under Louisiana law. Beebe v. Moormack Gulf Lines, 59 F.2d at 320. Thus, Roberta Mitchell was not the decedent's legal widow. The only remaining question is whether she is entitled to a share of the death gratuity under Louisiana's rule of law that a marriage which has been declared null produces its civil effects in favor of one of its parties who has acted in good faith. LA. CIV. CODE ANN. arts. 117 & 118 (West 1952). See Succession of Fields, 62 So.2d 495 (1952) (holding that a putative wife, who married decedent in good faith, was entitled to an equal share in property left by decedent, although he allegedly had not obtained a divorce from a former wife).

Federal law governs payment of the death gratuity. Matter of Hall, B-193503, March 8, 1979. Where a marriage remains null, "the civil effects which follow are

only those arising out of the state law. They do not include the benefits extended to a widow under a federal statute." Beebe v. Moormack Gulf Lines, 59 F.2d at 320.

In United States v. Robinson, 40 F.2d 14, 16 (5th Cir. 1930), the court held that a putative wife under Louisiana law was not a "spouse," a term which had been designated in an act of Congress as a class of beneficiaries entitled to war risk insurance. The court stated that "[i]t would impair the uniform operation of the act throughout the country to permit a putative wife to be designated in Louisiana and rejected elsewhere." Id.

The same reasoning precludes a finding that Congress intended the specific enumeration of the term "surviving spouse" in 10 U.S.C. § 1477(a) to mean anything but a lawful widow or widower. Given our determination of Shirley Mitchell as the decedent's legal widow, we find no authority under the Federal statute that would permit payment of a portion of the death gratuity to a putative spouse, even if she married the member in good faith without knowing of his prior marriages and without discovering the truth until after his death. Roberta Mitchell may not be paid the proceeds of the death gratuity absent a decree from the Court of Claims or another court of competent jurisdiction.

Accordingly, we sustain the action taken by our Claims Group allowing Shirley Mitchell's claim and precluding all other claims to the death gratuity.

Harry R. Van Cleave
for Comptroller General
of the United States