



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Francis E. Deugaw, USA (Retired) (Deceased) -
Claim for Retired Pay

File: B-228767

Date: September 14, 1988

DIGEST

Where a designated beneficiary for purposes of retired pay fails to file a claim and cannot be located within 3 years after a member's death, the person next in order of precedence, here the surviving spouse, is entitled to the unpaid retired pay of the member pursuant to 10 U.S.C. § 2771(a) (1982) and 4 C.F.R. § 34.3(c) (1988).

DECISION

This decision is in response to a request from the United States Army Finance and Accounting Center, Indianapolis, Indiana (Army), as to whether Mrs. Gisela Twomey, formerly Mrs. Gisela Deugaw, is entitled to receive the unpaid retired pay of Francis E. Deugaw, USA (Retired) (Deceased). For the following reasons, we find that she is so entitled.

BACKGROUND

The record before us indicates that on June 7, 1965, Mr. Deugaw designated his wife, Mrs. Ruth Deugaw, as his beneficiary for unpaid pay. On October 14, 1968, Mr. Deugaw was granted a divorce from Ruth Deugaw.^{1/} On September 25, 1970, Mr. Deugaw married Gisela Kabey, who then became known as Mrs. Gisela Deugaw, before the Registrar of Marriages in Nauheim in the Federal Republic of Germany. On February 14, 1983, Mr. Deugaw died.^{2/}

^{1/} Deugaw v. Deugaw, Case No. 172114 (Cir. Ct. Hillsborough County, Florida, Oct. 14, 1968).

^{2/} Mrs. Gisela Deugaw has since remarried and is now known as Mrs. Gisela Twomey.

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At the time this case was forwarded to our Office, the Army questioned the validity of Mr. Deugaw's second marriage since the Army did not have a copy of Mr. Deugaw's divorce decree from his first wife, Mrs. Ruth Deugaw. A copy of that decree has since been given to the Army and is part of the file submitted to our Office, thus removing any doubt as to validity of the second marriage. We also note that although not determinative of the issue of who is entitled to Mr. Deugaw's unpaid retired pay in this case, Mrs. Gisela Deugaw was designated as the beneficiary of the Survivor Benefit Plan annuity provided for by Mr. Deugaw.

OPINION

Section 2771 of title 10 United States Code provides:

"(a) In the settlement of the accounts of a deceased member of the armed forces who dies after December 31, 1955, an amount due from the armed force of which he was a member shall be paid to the person highest on the following list living on the date of death:

"(1) Beneficiary designated by him in writing to receive such an amount, if the designation is received, before the deceased member's death, at the place named in regulations to be prescribed by the Secretary concerned.

"(2) Surviving spouse.

"(3) Children and dependents, by representation.

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"(d) A payment under this section bars recovery by any other person of the amount paid."

After repeating the full statutory order of precedence, 4 C.F.R. § 34.3(c) (1988) further provides:

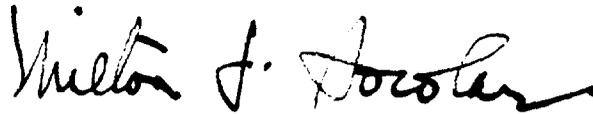
"When the person(s) otherwise entitled to payment has not submitted a claim and cannot be located within 3 years after the death of the member, payment shall be made to the person(s) in the same class of entitlement, or in the absence of anyone in the same class then the person(s) next in order of precedence as described in this paragraph."

The retired pay of a retired member of the armed services accrues only during the life of a member. 48 Comp. Gen. 706 (1969). Payment of such pay is generally authorized to be

made only to the retired member, except that upon his death the amount accrued but unpaid may be paid to his beneficiary as provided by 10 U.S.C. § 2771 (1982). The beneficiary designation becomes effective upon the member's death and thus the order of precedence prescribed by 10 U.S.C. § 2771(a) (1982) applies to the undistributed amount of retired pay due.

Mr. Deugaw had designated Mrs. Ruth Deugaw as his beneficiary for unpaid pay, and he did not file any subsequent changes to this designation. That designated, identifiable person was thus first in order of precedence under subsection 2771(a) and was entitled to the member's accumulated retired pay following his death, notwithstanding that they subsequently had divorced. Sergeant Mark D. McBride, USA (Deceased), B-222066, June 26, 1986. However, Mrs. Ruth Deugaw has not submitted a claim, the Army cannot locate her, and over 3 years have elapsed since the death of the member. Thus, in accordance with the provisions of 4 C.F.R. § 34.3(c) (1988), the entitlement to payment became vested in the person next in order of precedence, his surviving spouse, Mrs. Gisela Deugaw, who is now known as Mrs. Gisela Twomey.

Accordingly, we find that Mrs. Gisela Twomey is entitled to receive the unpaid retired pay of Francis E. Deugaw, USA, (Retired) (Deceased).

for 
Comptroller General
of the United States