



The Comptroller General
of the United States

Washington, D.C. 20548

Butler

Decision

Matter of: Death Gratuity
File: B-227582
Date: March 21, 1989

DIGEST

In the absence of evidence that husband of deceased service member acted with felonious intent in connection with the member's death, he is entitled to death gratuity payable under 10 U.S.C. § 1477.

DECISION

The parents of a deceased Navy member appeal a settlement of our Claims Group which denied their claim and which awarded the death gratuity authorized under 10 U.S.C. § 1477 to the deceased member's husband. The parents allege that the member's husband was responsible for her death. For the following reasons the settlement of the Claims Group is sustained and the deceased member's husband is entitled to the death gratuity and the claim of the parents must be denied.

BACKGROUND

The deceased member of the Navy died of a gun shot wound on February 19, 1985. Her husband, also a member of the Navy, became a suspect in the investigation of her death. Investigations were conducted in this case by a civilian police department and by the Naval Investigative Service (NIS). Upon completion of the investigations, it was determined that evidence was insufficient to charge her husband with murder or any lesser offenses and that her death was a suicide.

The deceased member's parents claim, however, that the investigations were not conducted thoroughly and that their daughter's husband is guilty of premeditated murder of their daughter. The parents claim that they are the eligible beneficiaries of the death gratuity payment in view of their allegations and on the basis that the husband denied his marriage to their daughter when questioned by his commander.

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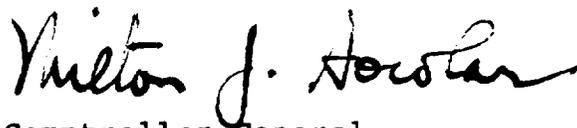
Under the provisions of 10 U.S.C. § 1477(a) a death gratuity is payable upon the death of a member of the armed services. The death gratuity is payable to the member's spouse. If there is no spouse then the gratuity is payable to the member's children. If there is neither a spouse nor children the gratuity may then be paid the member's parents if designated to receive the gratuity by the deceased member.

We have held that if felonious intent is attributable to an individual implicated in the death of a service member who would otherwise be entitled to the death gratuity, the gratuity may not be paid to that individual. See 55 Comp. Gen. 1033 (1976). However, in the absence of felonious intent on the part of the individual that person is entitled to the death gratuity.

In this case the matter was investigated by the proper authorities and a conclusion was reached that the deceased member's husband could not be charged with any offense in connection with her death. In these circumstances it appears that no felonious intent is attributable to the husband and he is therefore entitled to the death gratuity. Additionally, whether the husband denied his marriage to Navy officials has no bearing on the disposition of this case since he was the deceased member's lawful husband.

The burden of proof is on the claimant to prove the elements of his claim. Thus, a claim which is based on allegations not supported by the record may not be allowed.

Accordingly, the deceased member's parents are not entitled to the death gratuity and our Claims Group's settlement is sustained.



Acting Comptroller General
of the United States