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Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Vernon M. Perkins, USA, Retired (Deceased)

**File:** B-240942.2

**Date:** March 21, 1991

### DECISION

Mrs. Betty L. Perkins appeals a settlement of our Claims Group which indicated that she was not the proper beneficiary for the arrears of retired pay due her husband Vernon M. Perkins at the time of his death. For the following reasons we conclude that Mrs. Perkins is the proper beneficiary.

On July 26, 1989, Vernon M. Perkins, a retired member of the Army, used a VA form 21-438 addressed to the Army Retired Pay Division, Indianapolis, Indiana, to advise the Army that he wished to change the beneficiary for any unpaid pay and allowances to his wife Betty L. Perkins. Prior to that time his daughter Janine Perkins was the designated beneficiary to receive any unpaid retired pay due at his death. The Army indicated to him that they would not accept a change of beneficiary application unless the member's signature was witnessed by two people. Mr. Perkins died on August 31, 1989, prior to executing the change of beneficiary form with two witnesses to his signature.

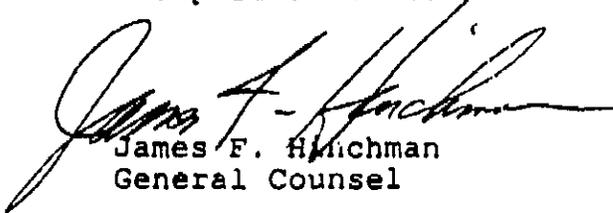
On the day of Mr. Perkins's death, August 31, 1989, his retired pay for the month of August was electronically transferred to his bank account which was held jointly with his wife. Army personnel informed Mrs. Perkins orally that the check should be returned to Retired Pay Operations of the Army Accounting and Finance Center and Mrs. Perkins so instructed her bank. Subsequently, the Army informed her that since her husband died on the last day of the month and the check had been credited to their account, the proceeds belonged to her. However, since the check had been returned to Retired Pay Operations the Army concluded that it must be paid to the designated beneficiary.

The matter was subsequently referred to the Claims Group of this Office for settlement. The Claims Group advised the Army by settlement certificate of March 28, 1990, that Janine Perkins was the proper party to receive the unpaid retired pay. Correspondence in the file indicates, however,

that Janine believes that Mrs. Perkins is entitled to the unpaid retired pay and desires that the payment be made to Mrs. Perkins. We have been informally advised that the Army has since paid the retired pay to Janine.

Subsection 2771(a)(1) of title 10, United States Code provides that amounts due a deceased member of an armed force shall be paid first to the beneficiary designated by the member in writing to receive such an amount, if the designation is received, before the deceased member's death, at a place named in the regulations to be prescribed by the Secretary concerned. Regulations implementing this provision are found in Army Regulation (AR) 37-104-1, Jan. 15, 1987. Paragraph 2-1c(2), part II, provides that changes in beneficiaries subsequent to retirement may be made by letter over signature of the member or by USAFAC Form 20-232 (Designation of Beneficiary; Unpaid Retired Pay of Deceased Retired Member). While the USAFAC form indicates that the member's signature should be witnessed, neither the law nor the regulation provide that the signature be witnessed.

VA Form 21-438 has nothing to do with military retired pay. It is used to provide supplementary information in connection with a claim for VA benefits. In substance it is nothing more than a blank sheet where an applicant can make any statement he or she wishes with a place for the name and signature of the applicant. Thus, when Mr. Perkins submitted the VA form to the Finance Center with typed instruction to change his beneficiary for unpaid pay and allowances to his wife Betty L. Perkins with his signature and dated July 26, 1989, the form was in substance a "letter" within the contemplation of the regulation. Since the regulation does not require that signatures on letters requesting changes in beneficiaries be witnessed, it is our view that Mr. Perkins executed a valid change of beneficiary. Accordingly, the retired pay for the month of August 1989, in the amount of \$823.65, should be paid to Mrs. Betty L. Perkins and the Army should recoup the payment made to Janine Perkins. The settlement of the Claims Group is reversed.



James F. Hochman  
General Counsel