



Comptroller General  
of the United States  
Washington, D.C. 20548

## Decision

**Matter of:** Cornell D. Cooper (Deceased) and Dorothy P. Fouts (Deceased)

**File:** B-254921

**Date:** March 11, 1994

### DIGEST

1. An employee of the Department of Energy (DOE), filed a Standard Form (SF) 1152, Designation of Beneficiary, Unpaid Compensation of Deceased Civilian Employee, with DOE, but failed to sign it. He subsequently died. The unsigned SF 1152 is legally ineffective, and his case is remanded to DOE for a determination of the beneficiary or beneficiaries under 5 U.S.C. § 5582(b), (1988).
2. An employee of the Department of Energy (DOE), filed a signed Standard Form (SF) 1152, Designation of Beneficiary, Unpaid Compensation of Deceased Civilian Employee, with DOE, but failed to designate a beneficiary. She subsequently died. Her signed SF 1152 is legally ineffective, and DOE is instructed to distribute her unpaid compensation in accordance with 5 U.S.C. § 5582(b) (1988).

### DECISION

The Department of Energy (DOE) requests a decision concerning the proper disposition of the unpaid compensation of two former employees, Mr. Cornell D. Cooper (deceased) and Mrs. Dorothy P. Fouts (deceased).<sup>1</sup> For the following reasons, we conclude that both designations of beneficiary are legally ineffective, and we remand the two cases to DOE to distribute the unpaid compensation in accordance with 5 U.S.C. § 5582(b) (1988), as further indicated below.

#### Mr. Cooper's Case

When he was a Department of Energy (DOE) employee, Mr. Cooper filled out a Standard Form (SF) 1152, Designation

<sup>1</sup>This decision was requested by Ms. Elizabeth E. Smedley, Acting Chief Financial Officer, Department of Energy, Washington, DC.

of Beneficiary, Unpaid Compensation of Deceased Civilian Employee. He designated his grandmother, Mrs. Rosalie Bursh, as sole beneficiary, and obtained the required signatures of two witnesses. However, he failed to sign and date the SF 1152, which was filed with DOE on June 4, 1990.

On January 30, 1993, Mr. Cooper died. Subsequently, Mrs. Bursh executed a Standard Form 1153, Claim for Unpaid Compensation of Deceased Civilian Employee. Given the above circumstances, DOE questions whether the unsigned and undated SF 1152 of Mr. Cooper was legally effective, and thus believes the unpaid compensation of Mr. Cooper should be given to the beneficiary or beneficiaries in the highest statutory order of precedence under 5 U.S.C. § 5582(b) (1988), as if Mr. Cooper had failed to designate a beneficiary.

The disposition of unpaid compensation due an employee of the federal government is controlled by the provisions of 5 U.S.C. § 5582 (1988) which state that money due a deceased employee at the time of his death should first be paid to the beneficiary or beneficiaries "designated by the employee in a writing received in the employing agency before his death." If there is no such written designation, the statute then provides an order or precedence under which other individuals may be paid.

In regard to Mr. Cooper's case, we note that 4 C.F.R. § 33.5(c) (1993), in relevant part, provides:

"[t]he SF 1152 must be executed in duplicate by the employee and filed with the employing agency where the proper officer will sign it and insert the date of receipt in the space provided in each part, file the original, and return the duplicate to the employee"

On the basis of the plain wording of this regulation, we believe that the employee must execute the original SF 1152, i.e., the employee must place his or her signature on the original SF 1152, in order for it to become legally effective under 4 C.F.R. § 33.5(c) (1993). Mr. Cooper's failure to sign the SF 1152 was thus a material defect which prevented the SF 1152 from becoming legally effective. We note that in the analogous context of the signing of wills, courts have traditionally strictly construed statutory requirements that a will, whether witnessed or holographic, requires the signature of the testator in order to be

valid.<sup>2</sup> Thus, since Mr. Cooper did not sign his SF 1152, it is legally ineffective. See 5 U.S.C. § 5582(b) (1988); 4 C.F.R. § 33.5(a) and (c) (1993).<sup>3</sup>

Since there was no legally valid designation of a beneficiary by Mr. Cooper, his unpaid compensation should be given to the beneficiary or beneficiaries in the next highest order of precedence under 5 U.S.C. § 5582(b) (1988), quoted above, and we remand his case to DOE for that determination since the present record does not inform us of such beneficiaries, if any. See Richard A. Davenport, B-249708.2, Oct. 29, 1992.

### Mrs. Fouts's Case

When she was a DOE employee, Mrs. Dorothy P. Fouts filled out an SF 1152, Designation of Beneficiary, Unpaid Compensation of Deceased Civilian Employee. While she signed and dated it, and obtained the required signatures of two witnesses, she failed to designate a beneficiary. Her SF 1152 was received by DOE on July 16, 1990.

On March 30, 1993, Mrs. Fouts died. Subsequent to Mrs. Fouts's death, Mr. Arthur Guy Fouts, the decedent's former husband executed an SF 1153, Claim for Unpaid Compensation of Deceased Civilian Employee, on which he claimed her unpaid compensation as Guardian of the person and property of their four minor children. Mr. Fouts signed and dated this SF 1153 on April 21, 1993. Subsequently, one of the children, Ms. Rebecca Marie Fouts, has become 18 years of age, thus reaching the age of majority. We note that the Last Will and Testament of Mrs. Dorothy P. Fouts designated Mr. Fouts, the decedent's former husband, as Guardian of the person and property of the minor children of their former marriage.

DOE has also received correspondence from the Law Offices of Arch and Steinberg on behalf of the Personal Representatives

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<sup>2</sup>See e.g. MD. Code Ann., Estates and Trusts, § 4-102 (1991); Dietz v. Moore, 277 Md. 1, 5, 351 A.2d 428, 431 (1976), citing Van Meter v. Van Meter, 183 Md. 614, 619, 39 A.2d 752, 755 (1944); Kirgan v. Parks, 60 Md. App. 1, 478 A.2d 713 (1984); O'Neal v. Jennings, 53 Md. App. 604, 455 A.2d 66 (1983); Estate of Twohig, 178 Cal. App. 3d 555, 223 Cal. Rptr. 352 (1986).

<sup>3</sup>Our decision here does not deal with written designations of beneficiary without using an SF 1152, or the legal effect, if any, of failure to date an SF 1152 or other written designations of beneficiary.

(Executors) of Mrs. Fouts's Will, Mr. and Mrs. Howard Needham, which, in essence, requests that the unpaid compensation of Mrs. Fouts be paid to the Fouts Family Trust, as established by Mrs. Fouts's Will.

The DOE believes that since Mrs. Fouts failed to designate a beneficiary on the SF 1152, that form was legally ineffective, and thus the unpaid compensation of Mr. Cooper should be given to the beneficiary or beneficiaries in the next highest statutory order of precedence in 5 U.S.C. § 5582(b) (1988).

In regard to Mrs. Fouts's case, we conclude that her signed SF 1152 on which she failed to designate a beneficiary is legally ineffective. See the requirements of 5 U.S.C. § 5582(b) (1988), and 4 C.F.R. § 33.5(a) and (c) (1993). Thus, the unpaid compensation of Mrs. Fouts should be given to the beneficiaries in the next highest statutory order of precedence in 5 U.S.C. § 5582(b) (1988), as we determine below, based on the record submitted by DOE.

In making such determinations our Office has consistently held that the disposition of unpaid compensation or other amounts payable under federal law is governed exclusively by federal statute and regulation, and not by the laws and courts of the state of domicile or other jurisdiction.<sup>4</sup> Our Office has also held that a designation by will does not meet the statutory requirement that the designation be made by the employee to his employing agency prior to his death.<sup>5</sup> Hence, entitlement to the unpaid compensation of a deceased federal employee vests in the beneficiary entitled under 5 U.S.C. § 5582 at the time of the employee's death, notwithstanding any competing claims presented by a surviving spouse or others.<sup>6</sup> Thus, there is no legal basis for DOE to pay the 75 percent of Mrs. Fouts's unpaid compensation to the Fouts Family Trust as requested by the Personal Representatives (Executors) of Mrs. Fouts's Will. See 5 U.S.C. § 5582(b) (1988) and decisions just cited.

Under 5 U.S.C. § 5582(b) (1988), the beneficiaries in the highest order of precedence are the four children of Mr. and Mrs. Fouts. We understand that the oldest, Ms. Rebecca Marie Fouts, has now turned 18, thus reaching

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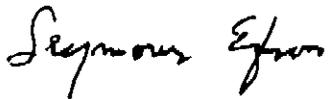
<sup>4</sup>Richard A. Davenport, Deceased, B-249708.2, Oct. 29, 1992, citing Chester A. Dean, B-227728, Mar. 23, 1988.

<sup>5</sup>Richard A. Davenport, Deceased, supra, citing B-169560, June 3, 1970.

<sup>6</sup>Richard A. Davenport, Deceased, supra, citing Chester A. Dean, B-227728, Mar. 23, 1988, et al.

the age of majority, and the other three children are still minors. Thus, pursuant to 5 U.S.C. § 5582(b) (1988), DOE should pay 25 percent of Mrs. Fouts's unpaid compensation to "Rebecca Marie Fouts," and 75 percent of Mrs. Fouts's unpaid compensation to "Arthur Guy Fouts, as Guardian of the Persons and Properties of Rachel Dawn Kathryn Fouts, Jasmine Leigh Fouts, and Jessica Rose Fouts (three minors)."

Accordingly, we conclude that Mr. Cooper's unsigned designation of beneficiary form is legally ineffective, and we remand his case to DOE for a determination of the beneficiary or beneficiaries in the highest order of precedence under 5 U.S.C. § 5582(b) (1988). In regard to Mrs. Fouts's case, we conclude that her signed designation of beneficiary, form on which she failed to designate a beneficiary, is legally ineffective, and DOE is instructed to distribute her unpaid compensation as set forth above.

*for*   
Robert P. Murphy  
Acting General Counsel