

DECISION

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

FILE: B-184906

DATE: APR 20 1976

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**MATTER OF: Lieutenant Colonel Roue Leonard Hogan, USA
(Retired) (Deceased)**

DIGEST: Deceased service member's first wife is entitled to arrears of retired pay of deceased member since Retired Pay Division of Army Finance Center has on file a form designating deceased member's first wife as beneficiary and did not receive form changing that designation of beneficiary prior to member's death. Deceased member's second wife is not presently entitled to arrears of pay but she may become so entitled if first wife fails to file a claim within 3 years after member's death.

This action is in response to a letter dated August 13, 1975, from Mrs. Beatrice J. Hogan, which, in effect, requests reconsideration of a settlement dated September 4, 1974, by our Transportation and Claims Division (now Claims Division) which disallowed her claim for the arrears of retired pay due in the case of the late Lieutenant Colonel Roue Leonard Hogan, USA, who died November 11, 1973. Mrs. Hogan claims to be the beneficiary designated to receive such arrears of retired pay.

The record shows that on February 3, 1961, the member executed a DD Form 93, Record of Emergency Data, naming his then wife, Dollie Mace Hogan, as beneficiary for unpaid pay and allowances which might be due on his death. Our Office has confirmed that this form was duly filed with the Retired Pay Division of the Army Finance Center, Indianapolis, Indiana.

The record also shows that on March 10, 1969, the member apparently executed a DA Form 3140, change of beneficiary, in which the beneficiary for unpaid pay and allowances was changed so as to substitute the name of his second wife, Beatrice J. Hogan, for that of his first wife, Dollie Mace Hogan. However, the Retired Pay Division of the Army Finance Center has advised this Office that they have no record of having received that change of beneficiary form until Mrs. Beatrice Hogan sent them a copy on February 14, 1974, several months after the member's death on November 11, 1973.

Section 2271(a) of title 10, United States Code, provides that in the settlement of the accounts of a deceased member of the armed

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forces who dies after December 31, 1955, the amount due 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 the regulations to be prescribed by the Secretary concerned.

"(2) Surviving spouse.

"(3) Children and their descendants, by representation.

"(4) Father and mother in equal parts or, if either is dead, the survivor. * * *"

Section 2771(c) of title 10 provides that designations and changes of designation of beneficiaries under (1) above are subject to regulations to be prescribed by the Secretary concerned.

It is our understanding that the purpose of section 2771, in authorizing payment to a designated beneficiary, was to provide a basis for payment by the Government, without regard to any other consideration, of the amounts due in such cases to the beneficiary of record at the time of member's death who had been designated in strict accordance with the applicable regulations. In line with that understanding 4 GAO 25 provides that:

"A designation of beneficiary under 10 U.S.C. 2771 * * * properly executed and filed in the place designated for such purpose in the regulations of the department concerned, will be effective thereafter until (1) expressly changed or revoked in writing or (2) the serviceman transfers to a different branch of the military service or (3) returns to the same or a different branch after a break in service."

The necessity for a rule requiring receipt of the change of beneficiary form at a particular place is clear. Were the change of beneficiary to be effective at some earlier date, the service concerned might be required to make dual payments. For example, the Army might pay the designated beneficiary of record, only to discover at some later date that a form changing that beneficiary had been executed, requiring a second payment to the previously unknown beneficiary.

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It appears reasonably clear from the record that the deceased member intended to change his designation of beneficiary. However, the record fails to establish that such new designation was received by the Department of the Army "before the deceased member's death." Since the law gives effect to a designation only if received in writing, at the proper place, before the member's death, the copy of the change of beneficiary form sent to the Army in this case, after the member's death, did not effect a change in the prior designation properly made by him and filed in accordance with the law and regulations.

Accordingly, on the basis of the present record, the action by our Claims Division is sustained. See B-148320, March 20, 1962. Compare B-177572, April 26, 1973.

In this connection, subsection 34.3(c) of title 4, Code of Federal Regulations, promulgated by this Office concerning the final settlement of accounts of deceased service members under 10 U.S.C. 2771, provides in pertinent part that when a person otherwise entitled to payment under 10 U.S.C. 2771(a) has not submitted a claim and cannot be located within 3 years after the death of the member, payment of the amount due shall be made to the person or persons in the same class or in the absence of anyone in the same class, then the person or persons in the next subordinate class.

To date, no claim for the unpaid retired pay due in the case has been made by Dollie Mace Hogan. Should she fail to claim the amount due on or before November 11, 1976, this Office would give further consideration to a claim by Mrs. Beatrice J. Hogan, if it is reasserted by her subsequent to that date.

R.F. KELLER

[Deputy] Comptroller General
of the United States