

DECISION



AGFSL - L - 11/1/76  
THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON D.C. 20548

820

FILE: B-187037

DATE: 11/1/76

MATTER OF: Beneficiary of unpaid pay - DOD Military  
Pay and Allowance Committee Action No. 527

DIGEST: The word "person" as used in 10 U.S.C. 2771(a) should be construed similarly to that word as used in 5 U.S.C. 5582(b) and, thus, may include a legal entity other than a natural person. Therefore, an Army member's designation as beneficiary of his unpaid retired pay upon his death of the United States Soldiers' Home, a Government instrumentality with the power to accept donations of money or property, was a valid designation under 10 U.S.C. 2771(a)(1) and the Home's claim may be allowed.

This action is in response to a letter, dated July 22, 1976, from the Assistant Secretary of Defense (Comptroller), requesting a decision on several questions concerning the meaning of the word "person" as used in 10 U.S.C. 2771(a) (1970) in connection with a beneficiary designated under that subsection to receive the amount due a deceased member of an armed force. The questions are presented in Department of Defense Military Pay and Allowance Committee Action No. 527 as follows:

"1. Does the word 'person' as used in 10 U.S.C. 2771(a) in connection with a beneficiary designated under clause (1) of that subsection include a legal entity other than a natural person?

"2. If the answer to question 1 is negative, are designations of other than natural persons to be considered invalid?

"3. If the answer [to question] 2 is affirmative, are the amounts due in such cases to be paid to eligible nondesignated beneficiaries?"

The discussion in the Committee Action states that Sergeant First Class [redacted] USA, retired [redacted], and died [redacted]. He had designated the United

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States Soldiers' and Airmen's Home (Soldiers' Home) as beneficiary for arrears of retired pay due at his death.

It is also stated that a claim submitted by the Administrative Officer of the Soldiers' Home was disallowed by the Claims Division of this Office on grounds that due to the use of the word "living" in the statute, the term "person" may be construed only to refer to natural persons as distinguished from legal entities and, therefore, under the statute, the Soldiers' Home lacks the capacity to receive the unpaid retired pay of the deceased member.

The view is expressed in the Committee Action that, by contrast, it was concluded in 52 Comp. Gen. 113 (1972) that under clause (6) of 10 U.S.C. 2771(a) the word "person" includes corporate entities as preferred creditors when given precedence pursuant to applicable State laws of the decedent's domicile. Further, the Committee Action indicates that since no construction was given to the word "person" in subsection 2771(a) with respect to the beneficiary designated under clause (1), the statutory interpretation should be clarified as to whether a retiree may designate a charitable organization, institution, etc., to receive payment of unpaid retired pay due at his death or is limited in such selection of a designated beneficiary to a natural person. The comment is made that since such amount represents compensation for past services, it seems that the member should have the right to select other than a natural person as beneficiary to receive the payment.

Subsection 2771(a) of title 10, United States Code, provides as follows:

"(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.

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"(2) Surviving spouse.

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

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

"(5) Legal representative.

"(6) Person entitled under the law of the domicile of the deceased member." (Emphasis added.)

<sup>10 U.S.C.</sup>  
Section 2771<sup>10 U.S.C.</sup> is derived from the act of July 12, 1955, ch. 328, 69 Stat. 295, which was enacted as a facility of payment statute for disposition of the accrued but unpaid pay and allowances (including retired pay) of a deceased member of an armed force. The legislative history of the 1955 act shows that its primary purpose was to eliminate the problems arising under former provisions of law which required the making of numerous determinations concerning the validity of marriages, divorces, the legitimacy of children, etc., when settling the final accounts of deceased service personnel. This purpose was effectively accomplished under the 1955 law by permitting each member of the Armed Forces to designate a beneficiary or beneficiaries and providing for payment of the amount due to such designated beneficiaries. In regard to such provision it is stated at page 3 of Report No. 670, Senate Committee on Armed Services, 84th Cong., 1st Sess., page 3 (1955), as follows:

"The aim of this bill is to permit the soldier himself to designate a beneficiary for his final pay. The measure in substance, by permitting a designated beneficiary, provides for a testamentary disposition by the serviceman of that part of his estate representing his final pay. This legislation would therefore permit the serviceman to make his own choice as to such beneficiary and at the same time relieve the General Accounting Office and the military departments of considerable administrative burden and cost in connection with the settlement of final-pay accounts." (Emphasis added.)

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See also the similar statement included in the House Committee on Armed Services report on the bill which became the 1955 act. H.R. Rep. No. 833, 84th Cong., 1st Sess., page 2 (1955).

The legislative history of the 1955 act also shows that it was patterned after the provisions of the act of August 3, 1950, ch. 518, 64 Stat. 395 (presently codified as 5 U.S.C. 5581-5584) governing the settlement of accounts of deceased civilian employees of the Government. Because of the similarity of the two acts we have held that a uniform interpretation will be given to them whenever possible. 52 Comp. Gen. 113, 115 (1972).

The civilian statute sets out a list of those entitled to money due an employee at the date of death (5 U.S.C. 5582(b)), similar to the list provided by 10 U.S.C. 2771(a) and provides that such money shall be paid to the "person or persons surviving at the date of death" in the order of precedence there provided. The regulations implementing 5 U.S.C. 5581-5584 state as follows concerning who may be designated as a beneficiary thereunder (4 C.F.R. 33.5(b)(1976)):

"\* \* \* An employee may designate any person or persons as beneficiary. The term 'person or persons' as used in this part includes a legal entity or the estate of the deceased employee."

That provision of the regulations is in line with the statement in the rules of construction provided by 1 U.S.C. 1 (1970) that in determining the meaning of any act of Congress, "unless the context indicates otherwise" the word "person" includes "corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals."

While the words "living" as used in 10 U.S.C. 2771(a) and "surviving" as used in 5 U.S.C. 5582(b) could be construed to restrict the designation of beneficiaries under those statutes to only natural persons, in view of the legislative purpose of the statutes (to allow the designation of beneficiaries of the member's or employee's choice similar to a testamentary disposition) we do not believe such a restricted construction to be in accord with the legislative intent. Compare 19 Comp. Gen. 227 (1939). Instead, it is our view that the definition of the term "person"

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provided in 4 C.F.R. 33.5(b), *supra*, for civilian employees' designations of beneficiaries is proper and a similar definition of that term is appropriate in construing 10 U.S.C. 2771(a). Thus, payment may be made to such a designated "legal entity" in existence and capable of receiving payment at the date of the member's death. This view is consistent with the view expressed in 52 Comp. Gen. 113, 118, *supra*, to the effect that when distribution is to be made under clause (6) of section 2771(a) in accordance with the law of the domicile of the deceased, the fact that an otherwise proper distributee is a corporation would not preclude it from receiving payment.

Accordingly, question 1 is answered in the affirmative and questions 2 and 3 require no answers.

Concerning the claim of the Soldiers' Home, as designated beneficiary, for Sergeant [redacted] arrears of retired pay, the Soldiers' Home is an instrumentality of the United States Government established by law. See 42 U.S.C. 41-54 (1970) and 16 Comp. Gen. 650 (1937). As a general rule, in the absence of statutory or constitutional prohibition a sovereign government may be a beneficiary under a will and the United States has the power to accept testamentary gifts. 94 C.J.S. Wills § 107a and United States v. Burnison, et al., 339 U.S. 87, 90-91 (1950). In this regard R.S. § 4819, 42 U.S.C. 45, specifically authorizes the commissioners of the Soldiers' Home to receive "all donations of money or property made by any person for the benefit of the institution, and hold the same for its sole and exclusive use."

Therefore, it is our view that the Soldiers' Home was a valid designated beneficiary of Sergeant [redacted] retired pay under 10 U.S.C. 2771(a)(1) in existence and capable of receiving such pay at the date of his death. Accordingly, the claim of the Soldiers' Home for such pay will now be allowed if otherwise correct.

DEPUTY COMPTROLLER GENERAL  
OF THE UNITED STATES  
[redacted]