

04095 4471

**DECISION**



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

**FILE: B-188296**

**DATE: NOV 17 1977**

**MATTER OF: Mrs. Frances Jackson**

**DIGEST: Claimant who contends she is widow of deceased member, whom she married in 1932, and seeks resumption of payment of an annuity under the Uniformed Services Contingency Option Act of 1953 which was discontinued by the Army in 1959 based on doubt as to her status as the lawful widow because of the member's prior marriage in 1920, as well as subsequent marriages in 1941 and 1950 with no evidence of divorce, may not have payment of the annuity resumed in the absence of a decree by a court of competent jurisdiction declaring her to be the lawful widow.**

This action is in response to correspondence from Legal Counsel For The Elderly on behalf of Mrs. Frances Jackson, requesting reconsideration of settlement dated March 10, 1977, by the Claims Division of this Office, which disallowed Mrs. Jackson's claim for renewal of discontinued annuity payments to her, as the widow of the late Sergeant Clarence T. Jackson, RA 1 403 385, USA, Retired.

Mrs. Jackson's claim was originally transmitted to our Claims Division as a doubtful claim by letter dated October 22, 1976, from the United States Army Finance Support Agency, Indianapolis, Indiana. The report and enclosures submitted at that time, indicated that Sergeant Clarence T. Jackson retired on November 30, 1966, with over 39 years' service, and subsequently elected (apparently in April 1964) to provide an annuity for his spouse at the time of his death under the Uniformed Services Contingency Option Act of 1953 (COA), ch. 393, 67 Stat. 501 (subsequently codified in 10 U.S.C. 1431 (Supp. IV, 1962 ed.)), in effect at that time, now the Retired Serviceman's Family Protection Plan (10 U.S.C. 1431, et seq. (1970)). The Army report stated that the member's original COA election form (DA Form 1041) was lost and the copy which was submitted shows the name of "Lillian Jackson" typed in as the member's spouse, but with "Lillian" struck through and "Frances" handwritten therein. In passing, it is noted that the COA election form of record was not signed by the member or dated. In any event, it was reported that after the member died (March 26, 1966),

jb

B-1,8296

and based on information available at that time, the Army Finance Center established an annuity effective March 1, 1956, payable to Mrs. Frances Jackson at the rate of \$17.51 per month. However, payment of such annuity to Frances was discontinued effective June 30, 1959, by the Army Finance Center, because that Center had received information casting doubt on the status of Frances as being the lawful wife of the deceased member.

Section 4(a) of the Uniformed Services Contingency Option Act of 1953, 67 Stat. 508, authorized the election by an active or retired member of an annuity payable to his "widow". Section 2(a) of the act, 67 Stat. 501, provided that the term "widow" refers "only to \* \* \* the spouse at the effective date of this Act in the case of a retired member at the effective date of this Act." The effective date of the act was November 1, 1953, and the record submitted to this Office shows substantial doubt as to who the retired member's spouse was at that time, as well as at the time of his death.

With respect to the foregoing, the Army originally reported to our Claims Division that while Frances had married the member on May 5, 1932, the member had subsequently married Georgina M. Jones on September 27, 1941, and Lillian Martin on December 17, 1950. Based upon the foregoing, Mrs. Jackson was advised in our Claims Division settlement of March 10, 1977, that the doubt existing as to the validity of her marriage to the member could not be overcome on the basis of the record, in the absence of evidence being furnished showing that the member had not divorced her, or by her furnishing a certified copy of a decree by a court of competent jurisdiction showing a final determination as to the legal widow of the decedent.

The request for reconsideration of this matter, submitted on behalf of Frances, indicates that it would be difficult for Frances to obtain a court decree as to the validity of her marriage. An affidavit under oath by Frances has been submitted that she had never been divorced from the member, nor had he ever informed her of his intention to seek a divorce. It is also submitted, on behalf of Frances, that the Veterans Administration "recognizes her as the legal widow of Mr. Jackson." On such bases, reconsideration is requested.

B-188396

However, in addition to the member's two reported marriages after his marriage to Frances, the record shows that in 1958 the Air Force Record Center in St. Louis, Missouri, reported to the Army Finance Center that the member was married to Eleanor Jackson, as of July 1, 1930, prior to his marriage to Frances. Because of this prior marriage, payment of the annuity to Frances was discontinued until such time as proof of dissolution of the marriage to Eleanor was received. The claimant, Frances, was advised of the foregoing by letter dated July 28, 1958, from the Army Finance Center. Thereafter, by letters dated October 13 and November 17, 1958, the claimant was further requested to furnish evidence as to the dissolution of the member's marriage to Eleanor Jackson. Moreover, request was made in these letters to the claimant for repayment in the amount of \$700.00, representing annuity payments made to her for the period March 1, 1954, through June 30, 1958.

On the basis of the foregoing, it would appear that the doubt of the Army Finance Center as to who was the lawful spouse of the member for purposes of COA annuity payments, arose not only from the member's two marriages subsequent to his marriage to Frances, but also because of his marriage to Eleanor prior to his marriage to Frances.

Based on the present record before our Office, we share that doubt and cannot affirmatively determine that Mrs. Frances Jackson is the lawful widow of Sergeant Clarence T. Jackson, for purposes of resumption of her claimed annuity payments. Moreover, the fact that Mrs. Frances Jackson may be recognized as the legal widow of the member by the Veterans Administration (VA) for purposes of benefits administered by the VA under title 38, United States Code, does not form a legal basis for the same finding in the matter of annuity payments administered under 10 U. S. C. 1431, et seq.

Accordingly, in the absence of a decree from a court of competent jurisdiction holding that Mrs. Frances Jackson is the lawful widow of the member, we can not authorize the resumption, or payment of any

B-109296

part of the claimed annuity payments, and the settlement of March 10, 1977, is sustained.

R.F.KELLER  
Deputy Comptroller General  
of the United States