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DECISION



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

FILE: B-189296

DATE: August 30, 1979

MATTER OF: Mrs. Frances Jackson

- DIGEST:
1. Claimant who presents evidence supporting her contention that she is widow of deceased member, whom she married in 1932, is entitled to resumption of payment of her annuity under Uniformed Services Contingency Option Act of 1953, which was discontinued by Army in 1959 based on doubt on alleged prior marriage of decedent in 1920. B-189296, November 16, 1977, modified accordingly.
 2. Payment of arrears of annuity claimed is limited by 31 U.S.C. 71a (1976) to only that amount accrued not more than 6 years before the claim was first received in the General Accounting Office.

This action is in response to correspondence from Norman L. Blumenfeld, Esq., on behalf of Mrs. Frances Jackson, requesting reconsideration of our decision B-189296, dated November 16, 1977, which sustained the denial of Mrs. Jackson's [claim for renewal of discontinued annuity payments] to her, as the widow of the late Sergeant Clarence T. Jackson, RA 1 403 235, USA, Retired. Upon reconsideration renewal of Mrs. Jackson's annuity payments is authorized. However, the amount payable for accrued payments due are limited by 31 U.S.C. 71a (1976) to the payments due beginning 6 years prior to the date Mrs. Jackson's claim was first received in the General Accounting Office.

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As background, Sergeant Jackson retired from the Army on November 30, 1946, with over 20 years' service, and subsequently elected (in April 1954) 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 (10 U.S.C. 1431 (Supp. IV, 1952 ed.)), which was in effect at that time. The COA was subsequently revised and renamed the Retired Serviceman's Family Protection Plan, now codified in 10 U.S.C. 1431, et seq. (1976).

Upon Sergeant Jackson's death (March 26, 1956), the Army Finance Center established an annuity payable to Mrs. Frances Jackson. However, payment of the annuity to her was

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discontinued effective June 30, 1959, because the Army received information casting doubt on the status of Frances as the lawful wife of the deceased member. While Frances had married Clarence on May 5, 1932, the Army Finance Center received information in 1959 from the Air Force Records Center that Clarence Jackson's records showed Eleanor Jackson, as wife, as of July 1, 1920. Nothing further was cited, nor was any certificate of marriage presented regarding Eleanor. In any event, primarily based on this alleged prior marriage, and two questionable reported marriages (without benefit of divorce) after the member's marriage to Frances, her annuity was discontinued by the Army in 1959.

In our decision B-189296, November 16, 1977, we indicated that on the record then before us, in view of the doubt in the matter we could not affirmatively determine that Frances Jackson was the lawful widow of Sergeant Jackson for purposes of her claimed annuity payments in the absence of a decree by a court of competent jurisdiction declaring her to be the lawful widow. Our decision was primarily directed to the questionable report of a 1920 marriage to Eleanor.

In line with our decision of November 16, 1977, Mr. Blumenfeld, attorney for Mrs. Jackson, now avers that he has researched and considered the jurisdictional authority of the courts in Virginia and the District of Columbia to issue a court decree stating that Frances Jackson was the widow of Sergeant Jackson; that research and consultation with court authorities lead to the conclusion that neither the Virginia courts (where Clarence and Frances Jackson were married in 1932) nor the courts in Washington, D.C., where Clarence died, have the power to issue a decree indicated in our decision.

Mrs. Jackson's attorney also affirms that:

"Counsel has spent considerable time determining whether Clarence Jackson was ever married to an Eleanor Jackson. The investigation uncovered absolutely no evidence that Sergeant Jackson was ever married to an Eleanor Jackson--in 1920, or at any other time. The claimant submits that the records of states in which Clarence Jackson resided prior to 1920 revealed

no evidence that Clarence Jackson and Eleanor Jackson were married. No records in those states indicate that he divorced an Eleanor Jackson or that he jointly owned real property in those states with any woman. The claimant affirms that no relative of Clarence Jackson has any knowledge of a marriage to any person prior to her own marriage to the decedent and that Sergeant Jackson never indicated at any time that he was ever married to Eleanor Jackson, though he admitted that subsequent to 1940 he claimed two other women were his wives.1/

"The claimant states that during her marriage of 24 years, no event or statement transpired which indicated that Clarence Jackson was married to any woman prior to his marriage to her.

" 1/ These marriages are invalid because Clarence and Frances Jackson were never divorced. Furthermore, Clarence Jackson confirmed his marriage to Frances Jackson during the time of his last illness in 1956, thereby reasserting that the later relationships were meretricious."

In connection with the foregoing, we have made inquiry to find supporting documentation for any marriage to Eleanor, but no records in the Army or Air Force Records Center show that any marriage to Eleanor existed. Moreover, the services' prior attempts to locate Eleanor, have also been unsuccessful, and no claim has been received from her.

Available records (1932 marriage certificate, death certificate, hospital records at Soldier's Home, etc.) and recognition of Mrs. Frances Jackson as widow by the Veterans Administration, support her claim to be the lawful widow. Therefore, it is now our view that such evidence sufficiently overcomes the tenuous report regarding Eleanor in 1920. Also, no record of any dissolution of Sergeant Jackson's marriage to Frances has been located and no claim has been presented by either of the two subsequent alleged wives. Therefore, we now

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find the matter sufficiently free from doubt that Frances Jackson may be considered the lawful widow of Sergeant Jackson for purpose of the claimed annuity. Our decision of November 16, 1977, is modified accordingly.

This finding, however is subject to the barring act, 31 U.S.C. 71a (1976), which provides in pertinent part:

"(1) Every claim or demand * * * against the United States cognizable by the General Accounting Office * * * shall be forever barred unless such claim * * * shall be received in said office within 6 years after the date such claim first accrued; * * *" (Emphasis supplied.)

Under that provision of law, as a condition precedent to a claimant's right to have her claim considered by the General Accounting Office, the claim must be "received in said office" within 6 years after it first accrued. Since our Office first received a claim on Mrs. Jackson's behalf on March 4, 1976, any amount which accrued more than 6 years prior to that date is barred by 31 U.S.C. 71a, and, thus that portion of the claim may not be allowed. Cf. B-190390, March 24, 1978.

Accordingly, Mrs. Frances Jackson is now entitled to arrears of her discontinued annuity to the extent it is not barred, and to resumption of such annuity.


Deputy Comptroller General
of the United States