

DOCUMENT RESUME

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[Claim for Arrears of Retired Pay Due Deceased Father-in-Law].
B-191818. November 21, 1978. 4 pp.

Decision re: Alexander Jacob Gust; by Robert F. Keller, Deputy
Comptroller General.

Contact: Office of the General Counsel: Personnel Law Matters
VI.

Organization Concerned: Department of the Air Force.

Authority: 10 U.S.C. 2771. Cal. Probate Code, sec. 200-258. Cal.
Probate Code, sec. 950.

Harriet D. Bacon claimed arrears of retired pay due her
father-in-law at the time of his death, contending that the
three checks represented the only funds available to take care
of personal obligations. The settlement of accounts of deceased
armed forces members is provided for in 10 U.S.C. 2771, but the
claimant did not qualify as heir to the separate property of the
deceased, and her claim was properly denied. (RRS)

DECISION

R. P. ...
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548
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FILE: B-191818**DATE: November 21, 1978****MATTER OF: Alexander Jacob Gust**

- DIGEST:**
1. Settlement of accounts of deceased members of the armed forces is provided for by 10 U.S.C. § 2771 (1970). In the absence of a designated beneficiary, a surviving spouse, child, or parent, or a legal representative of the estate, the person entitled under the law of the domicile of the deceased member is entitled to payment.
 2. Where law of domicile of deceased member of armed forces is made controlling by 10 U.S.C. § 2771(a)(6) (1970), and where stepdaughter-in-law of marriage dissolved by final decree of divorce in 1950 has no legally recognizable status under that domicile's law, claim for amounts due deceased member of armed forces, asserted by stepdaughter-in-law, was properly denied.

This decision is in response to a letter from Ms. Harriet D. Macon, to our Claims Division, asking for a review of the Certificate of Settlement Z-2750695 dated September 2, 1977, which disallowed her claim as daughter-in-law of Technical Sergeant Alexander J. Gust, USAF, Retired, deceased, for the arrears of retired pay due him at the date of his death.

Ms. Macon contends that three Government checks, totaling \$1,103.30, which were issued to Alexander J. Gust and returned unsigned to Air Force Casualty Officers, were intended to be re-issued in her name. She further contends that these checks represent the only funds available to take care of Alexander J. Gust's personal obligations, and questions disbursement of part of those funds to the funeral home which performed services in connection with the burial.

As indicated in the claims settlement, payment of arrears of pay due a deceased member of the uniformed services is subject to the provisions of 10 U.S.C. § 2771 (1970). That section is in pertinent part as follows:

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"(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.

"(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 supplied.)

The record presented by the Retired Pay Division, Directorate of Reserve and Retired Pay Operations, Air Force Accounting and Finance Center, clearly indicates that the deceased, Alexander J. Gust, did not designate a beneficiary.

Further, there is no record that the deceased had a surviving spouse, child (or descendants therefrom), or parent. While the claimant indicates that she is the member's daughter-in-law, the administrative report describes her relationship as "stepdaughter-in-law." In either case 10 U.S.C. § 2771 provides for payment to children which does not include children by marriage.

The next person entitled to payment, as provided in 10 U.S.C. § 2771(a)(5), is the legal representative of the estate. Since the claimant has not indicated that she has been appointed to administer the decedent's estate nor is there any indication that

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someone else has been appointed the provision of 10 U.S.C. § 2771(a)(6) governs. This requires the application of the law of the domicile of the deceased member, in this case California, to establish persons entitled to the funds existing in the accounts of Alexander J. Gust.

The relationship of the claimant as daughter-in-law or "step-daughter-in-law" of the deceased does not qualify her as heir to the separate property of the deceased. Cal. Probate Code §§ 200-258 (Deering). Further, since the marriage on which the claimant's relationship is based is apparently the marriage that was dissolved in 1950, she has no legally recognizable status under the laws of California, which must be applied pursuant to 10 U.S.C. § 2771(a)(6) (1970).

The payment of the balance owed for the funeral services of Alexander J. Gust was prescribed by law. Pursuant to 10 U.S.C. § 2771(a)(6), California law is controlling on issues of priority of disbursement of funds from a decedent's estate. Under Cal. Probate Code § 950 (Deering, 1972):

"The debts of the decedent, the expenses of administration and the charges against the estate shall be paid in the following order:

"(1) Expenses of administration;

"(2) Funeral expenses * * *."

The record before this Office indicates that an itemized bill was forwarded to Ms. Harriet Macon on April 28, 1977, by the Bryan-Braker Funeral Home detailing the expenses for the funeral of Alexander J. Gust. The copy of the bill contained in the administrative record indicates a payment by the Veterans Administration on June 20, 1977, in the amount of \$400, with a remaining balance due of \$560.28. Although claimant believes that the Veterans Administration agreed to pay all funeral expenses the applicable statutory provisions indicate that the Veterans Administration payment in the amount of \$400 was the maximum permissible under the law. Section 902 of title 38 of the United States Code provides for funeral expenses in the maximum amount of \$250. Section 903 authorizes an additional payment (maximum \$150) if burial is not in a cemetery under the jurisdiction of the United States.

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Therefore, the action by the Claims Division in certifying an amount of \$560.28 for payment of funeral expenses pursuant to 10 U.S.C. § 2771(c), and the California law made controlling by section 2771(a)(6) is affirmed.

Finally, the claimant states that the checks and amounts represented thereby constitute her only funds to take care of Alexander J. Gust's personal obligations. The balance of the sums due the member at the time of his death would be payable to her if she is appointed the legal representative of his estate for the purpose of settling these obligations.

R. F. K. 11/12
Deputy Comptroller General
of the United States