DECISION

DIGEST - 1 - Mil.

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

19

FILE: B-191953 DATE: July 3, 1978

MATTER OF: Major (Retired) (Deceased)

DIGEST: 1. It is against public policy to permit payment of Government benefits including an annuity under the Survivor Benefit Plan (10 U.S.C. 1447-1455) to a beneficiary who feloniously kills the person upon whose death such payments become due even when felony charges against the beneficiary are dismissed for lack of evidence, unless it is established with reasonable clarity the absence of felonious intent.

2. A beneficiary under the Survivor Benefit Plan (10 U.S.C. 1447-1455) was convicted of involuntary manslaughter but the conviction was reversed and remanded for a new trial by an appellate court. Although the beneficiary was not brought to trial a second time because the prosecutor determined there was insufficient evidence to warrant such action, a claim for Survivor Benefit Plan annuities by the beneficiary is too doubtful to warrant payment.

This action is in response to letter dated April 5, 1978, with enclosures, from Lieutenant Colonel Peter W. Kraska, Chief, Accounting and Finance Division, Air Force Accounting and Finance Center, Denver, Colorado, requesting an advance decision concerning the legality of paying a Survivor Benefit Plan (SBP) annuity to , widow of Major USAF, Retired (deceased), in the circumstances described. That request was assigned Control Number DO-AF-1291 by the Department of Defense, Military Pay and Allowance Committee, and was forwarded to this Office by the Assistant Director of Accounting and Finance, Headquarters U.S. Air Force by letter on May 15, 1978.

The facts provided are that Major elected SBP coverage for his wife, , on August 4, 1973. The member died on January 1, 1975, due to a gunshot wound inflicted by his wife. The wife was charged with second degree murder and a jury found her guilty of voluntary manslaughter.

She was sentenced to 7 years' imprisonment. Upon appeal of that verdict to the Supreme Court of Arkansas, the conviction was reversed and the cause remanded for a new trial because of errors in the instructions given the jury and on the basis that certain of the defendant's statements introduced at the trial should not have been admitted because they were made before she was given a "Miranda" warning. The motion of the prosecuting attorney to "nolle prosequi and dismiss" the criminal case was granted by the Circuit Court of Garland County, Arkansas, on August 15, 1977, based on a lack of evidence to warrant a jury trial without the defendant wife's statement.

It uniformly has been held that it is against public policy to permit the payment by the Government of arrears of pay, compensation or other benefits to an heir or beneficiary who feloniously kills the person upon whose death such payments become due. 13 Comp. Gen. 72 (1933) and 34 Comp. Gen. 103 (1954). And this is so even though such heir or beneficiary may not have been found guilty in criminal proceedings growing out of the homicide. See 55 Comp. Gen. 1033 (1976). Payment has been authorized in some cases involving death gratuity, unpaid pay and allowances, and unpaid retired pay, to the heir or beneficiary responsible for the serviceman's death in cases where the record generally established with reasonable clarity the absence of any felonious intent. See B-172014, March 11, 1971.

In line with the general principal of law that a person may not profit from his own wrongful acts, the courts have held that where a beneficiary of life insurance intentionally or feloniously causes the death of the insured there can be no recovery on the policy by such beneficiary. See 27 A.L.R. 3d 794 and cases cited therein. In New York Mutual Life Insurance Company v. _____, Administratrix, 117 U.S. 591 (1886), the Supreme Court of the United States stated at page 600:

> "* * * It would be a reproach to the jurisprudence of the country, if one could recover insurance money payable on the death of a party whose life he had feloniously taken. * * *"

See also John Hancock Mutual Life Insurance Co. v. _____, et al., 438 F. 2d 1207 (6th Cir. 1971). See also opinion of district court in this case at 312 F. Supp. 1320 (E.D. Mich. 1970).

In cases involving payments due from the United States under the National Service Life Insurance Act (the act of October 8, 1940, ch. 757, title VI, 54 Stat. 1008, now 38 U.S.C. 701 et seq. (1970)) administered by the Veterans Administration, Federal courts have applied similar rules. In _____ v. _____, 263 F. 2d 931 (6th Cir. 1959) the court held that although the National Service Life Insurance Act did not preclude payment in these cases, the equitable principle that no person should be permitted to profit from his own wrong, prevents a beneficiary from recovering unless the beneficiary was insane or the killing was accidental or in self-defense. The rule that the results of criminal prosecution are not binding on the court in determining the rights of the named beneficiary in cases involving National Service Life Insurance is also for application. See _____ v. United States, 113 F. Supp. 143 (W.D. Ark. 1953) affirmed _____ v. _____, 211 F. 2d 794 (8th Cir. 1954); United States v. _____, 91 F. Supp. 847 (E.D. Mich. 1950).

The SBP is, in effect, an insurance program available to retired members and active duty members eligible for retirement. A retired member, unless he elects not to participate, receives reduced retired pay in return for which the surviving spouse is entitled to an annuity subject to various conditions and limitations. Provision is also made for annuities for children and in the absence of a spouse or child an annuity may be provided for a person with an insurable interest. See generally 10 U.S.C. 1447-1455 (1976). There is no specific provision in the legislation creating the SBP under which a spouse who kills the retired member is denied benefits otherwise available. However, following the rule established by the courts in similar cases, including the cited cases under the National Service Life Insurance Act, it is our opinion that a spouse who is responsible for the death of the member is not eligible for an annuity unless it is shown that the killing was accidental, in self-defense or the act of an insane person.

Regarding the application of that rule to the claim of _____, we have before us a copy of the unpublished opinion of the Supreme Court of Arkansas in the case of _____ v. State, Sup. Ct. Ark., No. CR 76-65. As indicated above, the conviction of the claimant was reversed and remanded based on errors in the instructions given to the jury by the

trial court and the admission by the trial court of a statement or statements of the defendant which should have been excluded under the "Miranda" rule. Although has not been convicted of a crime as a result of the death of her husband, there appears to be a substantial basis for the conclusion that his death was not the result of an accident or that she killed him in self-defense. No allegation of insanity appears in the record.

Accordingly, in the absence of evidence to show that the claimant acted in self-defense, that the death of her husband resulted from accident or that she was insane at the time she killed him, her claim is too doubtful to permit payment. See v. United States, 17 Ct. Cl. 288, 291 (1881); v. United States, 19 Ct. Cl. 316 (1884).

The claimant may, of course, present evidence to us which would show her entitlement to an SBP annuity under the rules discussed above and she may pursue her claim by appropriate action in the courts.

For the reasons stated payment on the voucher in favor of is not authorized and it will be retained in this Office.

R.F.Keller

Deputy Comptroller General
of the United States