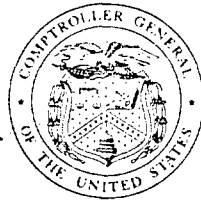


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DECISION



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

FILE: B-193743

DATE: September 28, 1979

MATTER OF: Sally Ann Morgan - [Claim of person
causing death of decedent]

DIGEST: Widow of a U.S. Forest Service employee who entered a plea of guilty to a charge of manslaughter in the death of her husband may not receive the unpaid compensation of her husband under 5 U.S.C. 5582. The fact that the widow was convicted of manslaughter, which did not require a finding of intent, does not alone, establish her lack of felonious intent in the killing of the employee.

The issue presented for our determination is whether an employee's widow who has entered a plea of guilty to the charge of manslaughter in connection with the employee's death may be paid the deceased employee's unpaid compensation. In view of the claimant's plea of guilty in connection with the killing of her husband, her claim may not be allowed.

Mr. H. Larry Jordan, an Authorized Certifying Officer of the U.S. Department of Agriculture, has requested an advance decision as to whether he may allow the claim of Mrs. Sally Ann Morgan, pursuant to 5 U.S.C. § 5582 (1976) as designated beneficiary and/or surviving spouse, for the unpaid compensation due her husband, Mr. Francis Morgan. Mr. Morgan was an employee of the U.S. Forest Service at the time of his death on November 3, 1976.

Mrs. Morgan was initially charged with murder, but on May 16, 1977, she entered a plea of guilty to the charge of manslaughter, a felony under section 6-58 of the Wyoming Statutes, 1957. The specific charge under section 6-58 Wyoming Statutes to which Mrs. Morgan pleaded guilty provides as follows:

"Did on the 3rd day of November, 1976, unlawfully kill a human being without malice, involuntarily, by culpable neglect or criminal careless [sic], to-wit: did shoot and kill Frances Morgan on said date."

The County and Prosecuting Attorney's amended information and the presentence investigation report both indicate that

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while Mrs. Morgan pointed a rifle at her husband, she did not intend to shoot and kill him.

In cases in which the person otherwise entitled to payment under 5 U.S.C. § 5582, has been convicted of a felony in connection with the death of the employee, we have denied payment in the absence of evidence establishing a lack of felonious or wrongful intent on such person's part. See 51 Comp. Gen. 483 (1972). This policy is based on the longstanding rule that it is against public policy to permit a person to profit by his wrongful act. See New York Mutual Life Insurance Company v. Armstrong, 117 U.S. 591, 600 (1886); Austin v. United States, 125 F. 2d 816 (7th Cir. 1942); and Cooley v. Weinberger, 398 F. Supp. 479 (E.D. Okla. 1974), affirmed 518 F. 2d 1151 (10th Cir. 1975).

The fact that the claimant was convicted of manslaughter, rather than murder has not been considered by this Office as establishing a lack of felonious intent. Id., and 13 Comp. Gen. 72 (1933). We do not believe that the amended information and the presentence investigation in this case are sufficient evidence to establish a lack of felonious intent in Mrs. Morgan's killing of her husband.

In accordance with the above, her claim for the unpaid compensation of her husband may not be allowed.


Deputy Comptroller General
of the United States