

DECISION



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**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548
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PLM2*

[Entitlement to Deceased Military Member's Unpaid Retired Pay]

FILE: B-199455

DATE: September 29, 1980

MATTER OF: Staff Sergeant Lawrence C. Northan, USAF
Retired (Deceased)

- DIGEST:
1. Settlement of accounts of deceased members of armed forces is pursuant to 10 U.S.C. 2771. In absence of anyone who qualifies under clauses (1)-(5) of subsection 2771(a), distribution will be made under clause (6) thereof to those persons who qualify under the laws of succession of the state where deceased member was domiciled.
 2. A settlement was made under 10 U.S.C. 2771(a)(6) to those properly qualified under the laws of succession of that state based on their assertion of being the deceased member's sole next of kin, and there was no indication of the existence of any other qualified persons. Where another claim was thereafter presented, the Government has obtained a good acquittance by the settlement and under 10 U.S.C. 2771(d) such payment bars recovery by the later claimant of any portion of the settlement.

This action is in response to a letter from R. Patrick Hayman, Esq., on behalf of Ms. Peggy Ward concerning her entitlement to receive a share of the unpaid retired pay due in the case of the late Staff Sergeant Lawrence C. Northan, USAF, Retired, who died July 25, 1976.

The matter of this claim was the subject of a settlement by our Claims Division dated March 22, 1978, which allowed payment of all monies due to Hayes F. Diggs and Mary E. Diggs as the half brother and half sister of the deceased. By settlement dated April 22, 1980, the claim of Peggy Ward was disallowed for the reason that based on Maryland law governing decedent's estates it did not appear that she qualified as a proper recipient.

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In response to the April 22, 1980 settlement, Mr. Hayman asserts that Section 1-210, subparagraph (c) of the Annotated Code of Maryland, entitled "Estates and Trusts", provides that the lineal descendant's of the nearest degree of an individual who himself would be a proper recipient shall receive that share. It is pointed out by Mr. Hayman that the member, Lawrence Northan, did not have any lineal descendants by blood or marriage at the time of his death. He did, however, have a half sister, Mary E. Diggs, and two half brothers, Hayes F. Diggs and George W. Diggs. It appears that George W. Diggs predeceased the member, and left surviving him three children, Peggy Diggs Ward, George W. Diggs, Jr., and Richard James Diggs, all of whom are alive.

It is Mr. Hayman's view that the unpaid retired pay of Mr. Northan should be distributed in three parts, with one part further divided into three shares, one each for the children of George W. Diggs, one of whom is Peggy Diggs Ward.

Although we do not dispute Mr. Hayman's analysis of the law of succession in the State of Maryland and its general applicability in this case, further payments in this case may not be made for the following reason.

Section 2771 of title 10, United States Code, provides in part:

"(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 his death:

"(1) Beneficiary designated by him in writing * * *.

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"(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.

* * * * *

"(c) * * * Payment under clause (6) of
subsection (a) shall be made--

"(1) upon settlement by the General
Accounting Office * * *

* * * * *

"(d) A payment under this section bars
recovery by any other person of the amount
paid."

The record shows that Mr. Northan was not succeeded
by anyone who qualified under clauses (1) through (4) of
section 2771(a), nor was there a legal representative
appointed who could receive those monies under clause (5).
As a result, distribution was to be made to those who
qualified under clause (6).


By Standard Form 1174, entitled "Claim for unpaid
compensation of deceased member of the uniformed services"
dated November 29, 1976, Hayes E. Diggs and Mary E. Diggs
made claim for these monies as the deceased member's
half brother and half sister, designating themselves as
the sole next of kin capable of inheriting from him and

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Hayes F. Diggs as the payor of funeral expenses. Between then and settlement on March 22, 1978, no other claims were received. Therefore, settlement was authorized to Hayes F. Diggs and Mary E. Diggs based on their relationship to the deceased member under Maryland law of succession.

Since the payment of the arrears of retired pay was made on the basis of the representation of those qualified to receive payment and there was nothing of record to indicate that anyone other than, or in addition to, Hayes Diggs and Mary Diggs had any interest in the matter, it is our view that the March 22, 1978 settlement was proper and the Government obtained a good acquittance by the payment. See B-184314, April 20, 1976. See also 4 C.F.R. 34.3. Compare 37 Comp. Gen. 131 (1957). Therefore, in accordance with the provisions of 10 U.S.C. 2771(d), such payment bars recovery by Peggy Diggs Ward from the United States for any portion of the settlement.

Accordingly, the action of our Claims Division disallowing the claim of Peggy Diggs Ward is sustained.



For the Comptroller General
of the United States