

DECISION

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

FILE: B-207143

DATE: December 26, 1984

MATTER OF: Joe Marvin (Deceased), Reconsidered

DIGEST:

A claim for the unpaid compensation of a deceased employee filed by his daughter on behalf of herself and her brother and sister of the whole blood was previously denied because of insufficient evidence that they were the legal beneficiaries of the claimed pay and that they constituted the entire class of individuals entitled to the payment. Although the issues then in doubt are unresolved, the other potential beneficiaries have failed to file claims for the unpaid compensation within 3 years of the former employee's death. Under the rule stated at 4 C.F.R. § 33.6(d) payment of the claim may be issued to the deceased employee's children on whose behalf the claim has been filed.

This action is in response to a request for reconsideration of Comptroller General decision, Joe Marvin (Deceased), B-207143, December 30, 1982. In that decision, the claim of the deceased employee's daughter, Josephine Marvin Smith, on behalf of herself, her brother, Joe Marvin III, and her sister, Dorothy J. Marvin Thomas, for their father's unpaid compensation was disallowed because of the insufficiency of evidence necessary to give the Government a good acquittance in the settlement of the claim. Since the time specified for the other potential claimants to file claims has passed and no such claims have been filed the deceased employee's unpaid compensation may be paid in equal shares to his children on whose behalf the present claim is now filed.

When we first considered Mrs. Smith's claim for her deceased father's unpaid compensation, evidence of record showed that in 1960 Mr. Marvin had represented that he was married to Mary Jean Jackson on March 5, 1949, in Montgomery, Alabama. Although evidence was presented by Mrs. Smith, through her attorney, that there is no official state record of the marriage of Joe Marvin and Mary Jean Jackson between 1946 and 1981, the facts in the case gave

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rise to the possibility that Joe Marvin and Mary Jean Jackson may, under Alabama law, have had a common law marriage.

In addition, the claim that we disallowed on December 20, 1982, was filed to the exclusion of one Ernest Lee Marvin (otherwise referred to as Ernest Lee Jackson), who appears to have been the child of Mr. Marvin and Mary Jean Jackson. In several personnel documents which he signed, Mr. Marvin listed Ernest as one of his four children.

Under the provisions of 5 U.S.C. § 5582(b) applicable to this case, federal compensation due an employee at the time of his death shall be paid in the following order of precedence:

"First, to the beneficiary or beneficiaries designated by the employee in a writing received in the employing agency before his death.

"Second, if there is no designated beneficiary, to the widow or widower of the employee.

"Third, if none of the above, to the child or children of the employee and the descendants of deceased children by representation."

Since he had not named a beneficiary for the purpose of this statute, if Mr. Marvin was married at the time of his death, then his widow would have had priority in entitlement to his unpaid compensation. If he was not married when he died then his children, including Ernest, would be entitled to receive the claimed compensation. See Joe Marvin (Deceased), B-207143, supra; 54 Comp. Gen. 858 (1975).

Because the facts were unclear as to Mr. Marvin's marital status at the time of his death, and as to the class of his children who might be entitled to share in his unpaid compensation, the earlier claim filed by his daughter, Mrs. Smith, was found to be too doubtful to warrant certification of payment. However, in our decision denying the claim, we stated:

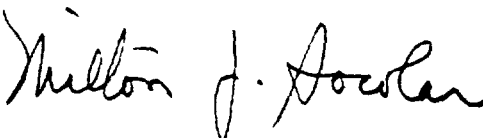
"* * * if the issues now in doubt remain unresolved for 3 years after the death [of

Joe Marvin], that is until January 1, 1984, the claim may be presented for reconsideration by this Office. See 4 C.F.R. 33.6(d)(6) *** **

The cited regulation provides that if a person (or persons) entitled under that section to payment of the unpaid compensation of a deceased employee has not submitted a claim for that pay and cannot be located within 3 years after the employee's death, payment is to be made to the other person or persons in the same class of entitlement or if there is no other in the same class then to persons next in order of precedence. We made reference in our December 30, 1982 decision to this provision to put the concerned parties on notice that if the other potential beneficiaries (that is, Mary Jean Jackson and Ernest Lee Jackson) who, at the time of that decision, had not filed claims did not do so or were not located by January 1, 1984, the claim that had been filed by Mrs. Smith on behalf of herself, her brother, Joe Marvin III, and her sister, Dorothy Thomas, might then be adjudged as payable.

Mrs. Smith has now resubmitted her claim through her attorney for payment of her deceased father's unpaid compensation. Since the issuance of our December 20, 1982 decision in this case, no claim has been filed in this Office by either Mary Jean Jackson or Ernest Lee Jackson (Marvin).

Since the 3-year period has now passed, in accordance with the provisions of 4 C.F.R. § 33.6, payment of the unpaid compensation of Joe Marvin (Deceased) may be issued in equal parts to his children, Josephine Marvin Smith, Joe Marvin III, and Dorothy J. Thomas, upon their presentation of individual claims for their respective shares, or to their legal counsel under their individual powers of attorney.^{1/}


for Comptroller General
of the United States

^{1/} Claims or powers of attorney should be presented to the Claims Group, General Government Division, U.S. General Accounting Office, 441 G St. N.W., Washington, D.C. 20548.