

DECISION



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

FILE: B-212148

DATE: July 23, 1984

MATTER OF: James A. Smalls - Unpaid Compensation -
Multiple Claimants

DIGEST:

Deceased employee, James A. Smalls, entered into ceremonial marriage with Juanita Stephens on March 1, 1955. Written report by Clerk of Court, Charleston County, South Carolina, states there is no record of divorce between James and Juanita in that jurisdiction. James Smalls entered into ceremonial marriage with Susie (now Susan) Wright on March 12, 1959. Although second marriage is presumed to be valid, such presumption is rebutted by showing that there is no record of divorce between James and Juanita. Under section 20-1-80, Title 20, Code of Laws of South Carolina (1976), all marriages contracted while either of the parties has a former wife or husband living are void. Hence, James' marriage to Susan is void, and she is not the legal widow of the deceased employee, and is not entitled to payment of his unpaid compensation.

This decision is in response to an appeal of our Claims Group's settlement action, Z-2844900, December 9, 1982, which denied the claim of Ms. Susan W. Smalls as widow of Mr. James A. Smalls, deceased. Her claim is for the unpaid compensation due Mr. Smalls, a former employee of the Department of the Navy, at the time of his death.

In its settlement action, the Claims Group determined, in essence, that since Mr. Smalls entered into a prior ceremonial marriage with one Juanita Stephens, for which no record of divorce is shown, the subsequent ceremonial marriage between the deceased employee and Ms. Susie (now Susan) Wright, under the laws of the State of South Carolina, is null and void. It was, therefore, concluded that Ms. Juanita Smalls is the lawful widow of Mr. Smalls and that Ms. Susan Smalls is not entitled to the unpaid compensation due the deceased employee at the

time of his death. For the reasons hereafter stated, the settlement action by the Claims Group disallowing the claim of Susan Smalls is sustained.

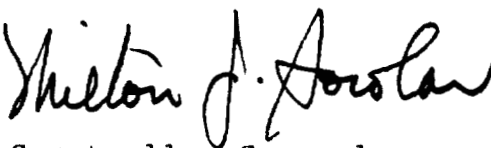
The written evidence of record shows that Mr. James A. Smalls, the deceased employee, entered into a ceremonial marriage with Juanita Stephens on March 1, 1955, in the County of Charleston, State of South Carolina. A written report by the Deputy Clerk of Court, Charleston County, South Carolina, states there is no record of a divorce between James Smalls and Juanita Stephens Smalls in that jurisdiction. On March 12, 1959, Mr. Smalls married Susie Wright, also in Charleston County, South Carolina.

In the case of multiple marriages by the same spouse, the law presumes that the second marriage is valid and that the first marriage was terminated by death or divorce. However, the presumption of the dissolution of a prior marriage, whether by death or divorce, should be indulged with caution. Thus, there is no unbending presumption in favor of a second marriage. The decision in any particular case rests on its own attending facts and circumstances. Hallums v. Hallums, 74 S.C. 407, 54 S.E. 613 (1905). In the instant case, the presumption of the validity of the second marriage between James and Susan has been rebutted by the report by the Clerk of Court, Charleston County, South Carolina, which states that they have not been able to find any record of a divorce between James Smalls and Juanita Stephens Smalls in that jurisdiction.

Under the laws of the State of South Carolina, all marriages contracted while either of the parties has a wife or husband still living, from whom no divorce has been obtained, are void. See Code of Laws of South Carolina, Title 20, § 20-1-80 (1976). Inasmuch as Mr. James Smalls had a former wife, Juanita, who was living on the date of his ceremonial marriage to Susan, and from whom he had not obtained a divorce, his subsequent ceremonial marriage to the claimant, Susan, was without legal effect, and such attempted marriage was void. The fact that Susan was not aware that James was married to but not divorced from Juanita, and that Susan was therefore innocent of any intent to violate the law, or that she and James cohabited together as husband and wife, is of no legal significance. See Davis v. Whitlock, 90 S.C. 233, 73 S.E. 171 (1911).

In her letter of appeal, Ms. Susan Smalls states, through her attorney, that an Order was issued by the United States District Court for the District of South Carolina, Charleston Division, dated October 14, 1982, which directed the distribution of the proceeds of a life insurance contract on the life of the deceased employee, James A. Smalls, among the two children of James and Juanita and the six children of James and Susan. The claimant and her attorney believe that it would be equitable for the Department of the Navy to distribute the unpaid compensation due Mr. Smalls at the time of his death, in the same manner as the proceeds of the life insurance policy were distributed. However, the procedures for the settlement of the accounts of deceased Federal employees and the order of precedence to be followed in the distribution of unpaid compensation due a Federal employee at the time of his or her death are specifically set forth in 5 U.S.C. §§ 5582 and 5583 (1982) and the implementing regulations issued by the Comptroller General of the United States in 4 C.F.R. Part 33 (1984). This Office is, therefore, required to settle such claims on the basis of the previously cited statutory and regulatory authority.

Accordingly, and based upon the written evidence of record, we conclude that the claimant, Ms. Susan (Susie) Smalls is not the lawful widow of the deceased employee, James A. Smalls, and consequently she is not entitled to the unpaid compensation due Mr. Smalls at the time of his death. The settlement action of the Claims Group dated December 9, 1982, disallowing the claim of Susan Smalls is sustained.

for 
Comptroller General
of the United States