

*Benfelt*  
PCM-II

# DECISION



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

FILE: B-222066

DATE: June 26, 1986

MATTER OF: Sergeant Mark D. McBride, USA (Deceased)

## DIGEST:

A soldier designated, as the person to receive his unpaid military pay and allowances in the event of his death, "Jean S. McBride (wife)." That designated, identifiable person is entitled to the soldier's accumulated pay following his death notwithstanding that they had divorced and she was the soldier's former wife at the time he designated her as his beneficiary. Determinations concerning entitlement to the accumulated pay of deceased service members must be made in conformity with their written designations, and a service member's designation may not be set aside on the basis of conjecture that the member might or should have intended to make a contrary designation.

The parents of Mark D. McBride appealed our Claims Group's denial of their claim for unpaid military compensation due their deceased son, who designated a different beneficiary. We conclude that the unpaid compensation must be paid to the designated beneficiary and not to the parents.

## Facts

Mark D. McBride was a sergeant in the United States Army. He died on September 28, 1983, from injuries sustained in an altercation on the same day. Sergeant McBride had designated "Jean S. McBride (wife)" as the beneficiary for unpaid pay and allowances on a form dated September 7, 1982. Jean S. McBride was not his wife on the date he signed the form; she was his ex-wife. The divorce was final on December 10, 1981, nearly 9 months prior to the filing of the beneficiary form. He also indicated on that form that his parents, Douglas J. McBride and Eleanor A. McBride, were both deceased. However, Douglas and Eleanor McBride are still alive.

035969

Mr. and Mrs. McBride contend that errors on the beneficiary form cast doubt on the rationality of their son's thought processes at the time the form was filed. At that time, he also was facing court-martial charges involving theft and absence without leave. His parents contend that the errors on the beneficiary form and "the apparent disarray of his affairs both personal and military" make it obvious that his actions were irrational and, therefore, the beneficiary form is not a reliable guide regarding his true intentions.

#### Analysis and Conclusion

The law governing distribution of unpaid pay and allowances is contained in 10 U.S.C. § 2771, which provides for the settlement of the accounts of a deceased member of the armed forces. Subsection (a) of that section reads:

"(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 death:"

The list is, in order of preference: a designated beneficiary, a surviving spouse, children and their descendants, parents, a legal representative, or a person entitled under the laws of the domicile of the deceased member. The U.S. Court of Claims has held that section 2771 is mandatory and is to be strictly construed and applied. "Section 2771 does not provide for the examination of a decedent's supposed or imputed or fictitious intent, but rather requires payment of funds exactly as specified in the deceased serviceman's written designation. If that is available and understandable, inquiry is at an end." Ward v. United States, 646 F.2d 474 at 477 (Ct. Cl. 1981). See also 55 Comp. Gen. 533 (1975).

In the case at hand, the late Sergeant McBride's written designation is available, and the beneficiary designation is clearly understandable. Moreover, we note that at the time he made that designation he was residing at Fort Leavenworth, Kansas, and was subject to close observation by military authorities, and we further note that he had been neither adjudged nor administratively determined to

B-222066

be mentally incompetent. Therefore, the inquiry is at an end. Payment must be made to the designated beneficiary.

Accordingly, we sustain our Claims Group's denial of the parents' claim in this matter.

*Milton J. Towler*  
for Comptroller General  
of the United States