



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Major [redacted], USAF
(Deceased)

File: B-244830

Date: February 14, 1992

DIGEST

A member filed for and was awarded a divorce from his second wife by a state court. His military records were changed to reflect his single status. At his death, both of his former wives filed claims as the mothers of the member's children, for the death gratuity and pay and allowances due. Their claims were paid, each former wife receiving half of the amount due on behalf of her child. The second wife then had her divorce from the member reversed on appeal. She claims the full amount of the death gratuity and allowances, based on the fact that she is now the member's widow. Payment to her would require that a second payment of the death gratuity and allowances be made. It has been well established that where confusion as to the member's marital status was largely due to his own representations, the government can receive a good acquittance of its obligation even though the payment of the death gratuity and other amounts may not have been made to the lawful wife. Where the member and the former spouse were divorced at the time of the member's death have represented themselves as such, the government has a good acquittance and a second payment should not be made.

DECISION

This is in response to Mrs. [redacted]'s appeal of our Claims Group settlement denying her claim as widow of Major [redacted] (USAF) (Deceased) for a death gratuity and arrears of certain allowances. For the following reasons her claim must be denied.

Major [redacted] was granted a divorce on March 14, 1989 from his wife [redacted] shortly before his death on March 20, 1989. His death occurred following a long illness. On March 17, 1989 he executed a "Record of Emergency Data" which indicated that he was divorced. Following his death, Mrs. [redacted] and Mrs. [redacted], a former spouse by an earlier marriage, claimed the 6-month death gratuity and

arrears of pay as the natural mothers of the decedent's two children. These claims were paid, 50 percent to each child.

The Supreme Court of Mississippi in a decision dated August 3, 1990 reversed the trial court decision that granted Major [redacted]'s divorce from [redacted].

Mrs. [redacted] claims that she, instead of Major [redacted]'s two children, is entitled to the death gratuity and arrears of pay and allowances as widow since the court has nullified Major [redacted]'s divorce from her.

The Air Force reports that shortly before his death Major [redacted] submitted a copy of the divorce he had just been granted. He also had sent in a signed, witnessed, statement of divorce and forms to change his beneficiary. The Air Force also points out that all the forms submitted by Mrs. [redacted] for claims related to Major [redacted]'s death stated that she was his ex-wife and no communication was received from Mrs. [redacted] or her attorney to indicate that she contested the divorce until September 25, 1989.

Section 1475 of title 10, United States Code, requires the Secretary concerned to make immediate payment of the death gratuity after notification of the death of the member. Section 1477 provides that the gratuity shall be paid to the survivor highest on the list set out in the statute which includes the surviving spouse and then the children of the member. The gratuity is intended to provide a readjustment benefit to those persons surviving the member who were dependent upon him or her. Its purpose is to help enable them to resettle during the transitional period immediately following the member's death. Pay and allowances due the member at the time of his death are payable to his designated beneficiary, his surviving spouse, or his children, in that order. 10 U.S.C. § 2771.

Generally, the government is not liable for a second payment of death benefits to the proper payee when it has been induced by the decedent's representations to make payment to someone else. It has been well established that where confusion as to the member's marital status was largely due to his own representations, the government can receive a good acquittance of its obligation even though the payment of the death gratuity may not have been made to the lawful wife. 37 Comp. Gen. 131. (1957).

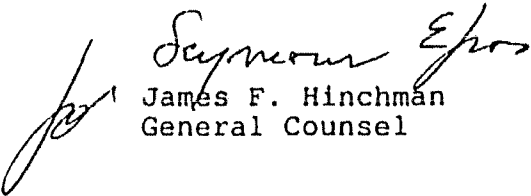
In the present case, Major [redacted] and Mrs. [redacted] made written representations that they were divorced. The documents pertaining to claims for benefits at Major [redacted]'s death state that he was divorced and that Mrs. [redacted] was his former wife. It is apparent that

Major _____ intended to be and believed he was divorced at his death. Thus, it appears that the Air Force did not have any basis to find that Major _____ was married at the time of his death.

Additionally, we have held that a decree of divorce dissolves a marriage and is conclusive as to the subsequent status of the parties. In cases where the decree of divorce is annulled or vacated, the marital rights, obligations and status of the parties are revived and restored and the parties are placed in the status they were in before the divorce. However, the parties are not necessarily treated as though they were not divorced, since the property rights of innocent third parties are not vacated. B-71134, Mar. 2, 1949.¹ Thus, reversal of the divorce does not provide a basis for a second payment.

Mrs. _____ now raises the possibility that Major _____ was "incapacitated" during the last days of his illness, since he was apparently receiving pain killing drugs. However, the extent of any incapacity is not relevant to the propriety of the decision of the Air Force to pay Major _____'s death gratuity and other benefits to his children on the basis of the facts of record at the time of payment.

Accordingly, since the documents executed by Major _____ and the claimant state that they were divorced, it is our view that the Air Force acted properly in making the payments to be decedent's children shortly after his death. Accordingly we sustain the Claims Group's settlement and Mrs. _____'s claim as widow must be denied.


James F. Hinchman
General Counsel

¹This appears consistent with state law. See Miss. Code. Ann. § 93-5-27 et. seq.