

DECISION

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

FILE: B-182749

DATE: SEP 24 1975

MATTER OF: Six months' death gratuity -
Sergeant Robert R. Heaton, USA, Deceased

DIGEST: Brother and sister-in-law (husband and wife) of service member are not eligible to receive six months' death gratuity (10 U.S.C. 903 (1952)) where member properly designated another eligible relative to be the recipient of such gratuity.

This action is in response to letters dated September 27 and December 14, 1974, signed, Mr. and Mrs. William H. Heaton, which constitute an appeal from the determination by the Transportation and Claims Division of this Office that they are not entitled to receive payment of the six months' death gratuity in the case of Sergeant Robert R. Heaton, USA, RA 14-273-010, deceased.

The record in this case shows that Sergeant Heaton was shown as missing in action in Korea on August 11, 1950. He was carried in this status until March 23, 1954, when an administrative determination of his death was made pursuant to the act of March 7, 1942, ch. 166, 56 Stat. 145, as amended, 50 U.S.C. App. 1001, et seq. (1952 ed.). The Report of Death (DA Form 52-1) dated March 23, 1954, showed Sergeant Heaton's next of kin as Mr. William H. Heaton, brother. The Report of Death also showed as beneficiary, Mr. Pinkney A. Heaton, brother, and as alternate beneficiary, Mr. Shafer E. Heaton, brother. This designation of beneficiary was for the six months' death gratuity payable pursuant to the act of December 17, 1919, ch. 6, 41 Stat. 367, as amended, 10 U.S.C. 903 (1952 ed.).

The record indicates that Sergeant Heaton was not survived by a widow, child or parent. Therefore, pursuant to the act of June 30, 1906, ch. 3914, 34 Stat. 750, as amended, 10 U.S.C. 868 (1952), the Army settled Sergeant Heaton's arrears of pay by paying one-seventh of such pay to each of his surviving brothers and sisters. The record shows that Mr. William H. Heaton was paid his share (\$1,237.58) by check dated June 30, 1954.

The record also shows that the full amount of the six months' death gratuity (\$1,185.90) was paid on April 19, 1954, to Pinkney A. Heaton, the designated beneficiary for such payment,

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in accordance with 10 U.S.C. 903 (1952), supra, which provides in pertinent part as follows:

"Immediately upon official notification of the death from wounds or disease, not the result of his own misconduct, of any officer or enlisted man on the active list of the Regular Army * * * the branch, office, or officers of the Army the Secretary of the Army may from time to time designate shall cause to be paid to the widow, and if there be no widow to the child or children, and if there be no widow or child to any other dependent relative of such officer or enlisted man previously designated by him, an amount equal to six months' pay at the rate received by such officer or enlisted man at the date of his death. The Secretary of the Army shall establish regulations requiring each officer and enlisted man having no wife or child to designate the proper dependent relative to whom this amount shall be paid in case of his death. * * *"
(Emphasis added.)

This Office has held that no affirmative showing of dependency would be required in making payments of the death gratuity to fathers, mothers, brothers or sisters designated as beneficiaries of deceased Army personnel who had an insurable interest in the life of the deceased by reason of relationship alone. See 22 Comp. Gen. 85 (1945). Pinkney Heaton was such a beneficiary.

The record shows that Mr. and Mrs. William H. Heaton and their attorneys wrote various letters to the Army claiming the six months' death gratuity. They were repeatedly advised that Mr. William H. Heaton had been paid his share of Sergeant Heaton's accrued pay and allowances and that, since Sergeant Heaton had designated Pinkney Heaton to receive the death gratuity, they were not entitled to that gratuity.

In April 1967 Mr. and Mrs. Heaton's claim for the death gratuity was forwarded for consideration to the Claims Division of this Office by the United States Army Finance Center. By Claims Division letter dated July 5, 1967, Mr. William Heaton was advised that inasmuch as he was not the person designated to receive the death gratuity, he

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would not be entitled to such payment, and the disposition of the gratuity as made by the Army on April 19, 1954 (to Pinkney Heaton), was proper.

In response to further correspondence Mr. and Mrs. Heaton were again advised by Claims Division letters dated December 10, 1969, and September 24, 1974, that the death gratuity had been properly paid to Pinkney Heaton and that the records fail to show that there is any additional amount due for arrears of pay or death gratuity.

As is stated previously, further correspondence dated September 27 and December 14, 1974, signed Mr. and Mrs. William H. Heaton, has been received reiterating the belief that they are entitled to the death gratuity. In support of that belief it is stated that an Army Finance Center letter addressed to Mr. and Mrs. William H. Heaton states that Sergeant Heaton designated them to receive the death gratuity. It is further indicated that during one of several visits Mrs. Heaton made to the Army Finance Center, someone at the Center changed the letter to state that Pinkney Heaton was the designated beneficiary.

Apparently the letter referred to is one dated November 15, 1960, to Mr. and Mrs. Heaton, a copy of which is included in the file. That letter advised them that Sergeant Heaton's arrears of pay were paid to his brothers and sisters in equal shares and further stated as follows:

"Records further show that the decedent designated you to receive the Six-Month's Death Gratuity Payment, which was paid by check for \$1185.90, on 19 April 1954."

The word "you" in the above quotation was stricken through and hand-printed above it is "Pinkney (HA)." The letter concluded by advising Mr. and Mrs. Heaton that their claim was disallowed.

The above-quoted sentence in the November 15, 1960 letter was apparently in error since the only record in the file showing Sergeant Heaton's designation of beneficiary for the death gratuity is, as noted above, the Report of Death (DA Form 52-1) which shows his brother Pinkney as primary beneficiary, and it was to Pinkney that the gratuity was paid on April 19, 1954. Apparently, when the error in the letter was brought, during Mrs. Heaton's visit, to the

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attention of the Finance Center employee who had signed the letter (HA), he changed the statement, in her presence, to reflect the true facts.

In any event the best evidence available as to Sergeant Heaton's designation of beneficiary is the Report of Death form which shows Pinkney as primary beneficiary. Mr. and Mrs. Heaton and their attorneys have been advised many times of that fact by the Army and this Office and they have been furnished copies of the Report of Death form. The erroneous statement in the November 15, 1960 letter, later corrected in Mrs. Heaton's presence, does not alter the facts of the matter.

Accordingly, since, based on the facts of record, the arrears of pay and death gratuity appear to have been properly paid and no further amounts are due, the disallowance of Mr. and Mrs. William H. Heaton's claim is sustained.

Paul G. Dembling
For the Comptroller General
of the United States