

Bellard PLH



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Linda Wilson - Claim for Survivor Benefit Plan
Annuity
File: B-226114
Date: December 15, 1987

DIGEST

The widow of an Air Force member claims a Survivor Benefit Plan annuity as his eligible widow. Since the claimant was not married to the member at the time he became eligible for retired pay, to qualify for an annuity she must have been married to him at least 1 year prior to his death. Although the parties had entered into a ceremonial marriage only 7 months prior to the member's death, the widow offered evidence of a common-law marriage that allegedly was entered into at least 1 year before the member's death. The disallowance of the claim is sustained on grounds of doubt concerning whether the parties entered into a present agreement to be married at the time their relationship began, as required to establish a common-law marriage under the applicable state law.

DECISION

Linda Wilson, by her attorney, David B. Small, appeals our Claims Group's disallowance^{1/} of her claim for a Survivor Benefit Plan annuity as the eligible widow of Master Sergeant Floyd C. Wilson, USAF (Retired). We sustain the disallowance.

BACKGROUND

The law is clear that a claimant who was not married to the retiree at the time the member became eligible for retired or retainer pay must show that she was married to him for at least 1 year immediately before his death. See 10 U.S.C. § 1447(3)(A). Ms. Wilson contends that our Claims Group's disallowance was erroneously based on the ground that the

^{1/} Settlement No. Z-2864278, April 10, 1987.

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ceremonial marriage between her and Sergeant Wilson took place only 7 months (on September 20, 1982) before Sergeant Wilson's death, which occurred on April 25, 1983. She explained that her eligibility for the annuity is based on a common-law relationship which she and Sergeant Wilson entered into more than 1 year before his death while residents of the State of Georgia, a state which recognizes the contracting of common-law marriage. Ms. Wilson alleges that she and Sergeant Wilson lived together, were known by all to be married, and that they considered themselves husband and wife since August 1981; therefore, she is Sergeant Wilson's eligible widow and entitled to the annuity.

DISCUSSION

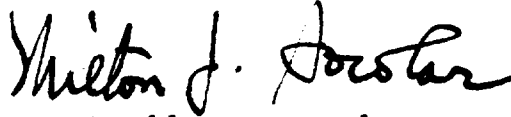
The disallowance of the claim was not based solely on the fact that the ceremonial marriage occurred less than 1 year before Sergeant Wilson's death. The allegation that there was a pre-existing common-law marriage was fully considered in terms of the law of Georgia relating to the matter. The disallowance included a determination that there was doubt concerning the crucial issue of whether Linda Wilson and Sergeant Wilson entered into a present agreement to be married at the time they began their relationship, rather than merely having an intent to marry some time in the future. Having a present intent to be married is a requirement of Georgia law providing for common-law marriages. See Hubbard v. State, 145 Ga. App. 714, 244 S.E. 2d 639 (1978).

We recognize that the record contains some evidence supporting the existence of the elements of cohabitation of the parties and holding themselves out as married; however, even if a present agreement might be inferred from evidence of those two elements, the doubt, which formed the basis for disallowance, was properly based on other evidence indicating that Linda and Sergeant Wilson did not intend to marry prior to their ceremonial marriage less than 1 year before his death.

The Claims Group's settlement certificate recited in considerable detail the basis for its conclusion and the Air Force's conclusion that the claim was too doubtful to allow. By way of summary, there was evidence in support of the claim that on dates more than 1 year before Sergeant Wilson's death Linda designated him as beneficiary of an unspecified benefit, and Linda used his surname on a residential purchase agreement. Conflicting with this evidence were Linda's letter indicating that she and Sergeant Wilson were "planning" to marry, tax forms executed

in her name, a reference to the ceremonial marriage when Sergeant Wilson executed a change of beneficiary, and the claimant's letter expressing her "understanding" that she and Sergeant Wilson were not "legally married" until September 20, 1982, the date of the ceremonial marriage. Other evidence offered by the claimant related to events within the 1-year period; therefore, it was of doubtful support of the claimant's case. Ms. Wilson's appeal presents no new information nor does it refute the information relied on in the settlement certificate.

Consistent with prior decisions of this Office where there is doubt concerning the validity of a claim, we conclude that, in the absence of a decree or judgment of a court of competent jurisdiction declaring that Linda and Sergeant Wilson were married prior to April 25, 1982, the claim must be denied. See Commander Mike J. Trens, USN, Retired, B-203903, Feb. 11, 1985, and Captain Henry D. LaPointe, USA, B-191316, Sept. 27, 1978.

for 
Comptroller General
of the United States