



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Private Calvin A. Allen, USA, Deceased -  
Death Gratuity - Invalid Marriage

File: B-229295

Date: August 10, 1988

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### DIGEST

A woman's claim for a death gratuity as the widow of a deceased service member is denied since she never obtained a divorce from her first husband and legally was not a surviving spouse. Also, her alternative claim for the death gratuity to be paid to her children as the stepchildren of the deceased is denied since her invalid marriage to the deceased precludes her children from having become the deceased's stepchildren.

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### DECISION

This decision is in response to an appeal on behalf of Margaret A. Allen and her children from our Claims Group's settlement of August 28, 1987. The Claims Group denied her claim for a death gratuity as the widow of Private Calvin A. Allen, a deceased member of the Army and the alternative claim of her children for a death gratuity as the stepchildren of the deceased. Since Margaret A. Allen was never divorced from her first husband she is not the widow of the deceased, and her children are not his stepchildren. Accordingly, Mr. Allen's mother is the rightful recipient of the death gratuity under 10 U.S.C. § 1477. Therefore, we uphold the Claims Group's denial of both Mrs. Allen's claim and the claim of the children.

The record indicates that Calvin A. Allen and Margaret Nalani Fogas were married in New York on January 5, 1983. Margaret A. Allen (apparently the former Ms. Fogas) admits that she married Ruben Parker prior to her marriage to Mr. Allen, and has no evidence of a legal divorce from Mr. Parker. Moreover, she states her belief that they had not been divorced. At the time of her marriage to Mr. Allen she had four children, who thereafter resided with them. Mr. Allen died of unknown causes on January 25, 1987. Mrs. Allen claims that she should receive the death gratuity as a surviving spouse. In the alternative, she claims that

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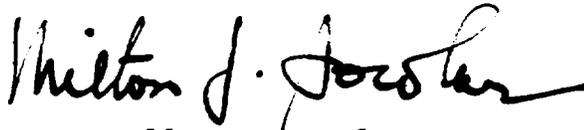
her children should receive the gratuity as stepchildren of Mr. Allen.

Under the provisions of 10 U.S.C. § 1477, the death gratuity of a deceased service member is paid to living survivors in the order set forth in subsection (a). In pertinent part, the order of precedence is (1) surviving spouse, (2) children, (3) designated parents, brothers, or sisters, and (4) parents. Subsection (b) prescribes that "children" applies to "stepchildren who were a part of the decedent's household at the time of his death." 10 U.S.C. § 1477(b)(3). Unless a claimant is one of the class of individuals entitled to the gratuity under the statute, there is no basis to pay him or her.

In regard to Mrs. Allen's claim, it has been held that "a person who has contracted a valid marriage does not have the capacity to contract a subsequent marriage while the first marriage remains undissolved by death or divorce." Chief Petty Officer Robert W. McEachern (Retired) (Deceased), B-229157, Jan. 11, 1988. Any subsequent marriage has no legal effect. Chief Petty Officer Howard E. Moore, USN (Retired) (Deceased), B-194469, May 14, 1979. Therefore, in view of the lack of the dissolution of her previous marriage to Mr. Parker, Mrs. Allen's marriage to Mr. Allen is a nullity. She is not a surviving spouse under 10 U.S.C. § 1477 and is not eligible to receive the death gratuity.

Turning to the claims of the stepchildren, we find that the absence of a legal marriage between Margaret A. Allen and the deceased necessarily precludes the children from consideration as "stepchildren." The relationship of stepparent and stepchild does not arise until a valid marriage takes place between the stepparent and the parent of the children. See 25 Comp. Gen. 725, 727 (1946). See also Hayley v. Browns of Bellport, 360 N.Y.S. 2d 103 (1974). Thus, without a legal marriage between the parties, the children of Mrs. Margaret A. Allen are not the stepchildren of Mr. Allen.

Accordingly, we uphold the Claims Group's settlement and authorize payment of the death gratuity to Mr. Allen's mother, who is the person highest on the list of survivors as set forth in 10 U.S.C. § 1477.

*for*   
Comptroller General  
of the United States