



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Ned E. Kerr (Deceased) - Claims for Unpaid
Compensation
Matter of:
B-228750
File:
Date: October 7, 1988

DIGEST

In cases of conflicting claims for the unpaid compensation of a deceased employee, we generally require either evidence sufficient to allow one claim and deny all others or a judicial determination by a court of competent jurisdiction establishing entitlement. Since this case presents several legal and factual conflicts on the written record, we believe that it would be better for a court of competent jurisdiction to resolve it.

DECISION

This decision is in response to a request from the Army Finance and Accounting Center concerning which one of several claimants is entitled to the unpaid compensation (\$369.02) of Ned E. Kerr (Deceased), a former civilian employee of the Army Corps of Engineers. For the following reasons, we believe that a court of competent jurisdiction, rather than our Office, should resolve this matter.

BACKGROUND

Mr. Kerr died on May 19, 1986, as a result of injuries received in a vehicular accident while on duty that day. Prior to his death, he had not filed any designation of beneficiary form for unpaid compensation. Thus, the recipient(s) entitled to receive his unpaid compensation will be determined by the order of precedence in 5 U.S.C. § 5582(b) (1982). Section 5582(b) provides that money due an employee at the time of his death shall be first paid to the beneficiary or beneficiaries designated by the employee in a writing or next, if there is no designated beneficiary, to the widow or widower of the employee, and then in descending order to the children, the parents, the legal representative of the estate, or other heirs.

043509/137038

In the present case, the following three persons or classes of persons have submitted claims to our Office: (1) Mrs. Margaret A. Kerr; (2) the three adult children of Mr. Kerr, i.e., Mrs. Cynthia K. Monroe, Ms. Penny Kerr, and Mr. Jimmy Kerr, who are represented by John Alley, Esquire; and (3) Mr. John R. Monroe, the conservator of the estate of Frankie Nell Kerr.

OPINION

As the following brief summary of the positions of the foregoing parties will show, there are several legal and factual disputes which have not been resolved.

The first claimant, Mrs. Margaret Kerr, claims to be the widow of Mr. Kerr by common-law marriage as recognized in Alabama, their apparent domicile for some time before the death of Mr. Kerr. The second group of claimants, Mr. Kerr's three adult children, dispute that her relationship has met the criteria for common-law marriages in Alabama, and they maintain that another woman may have preceded Mrs. Margaret Kerr in common-law marriage. Finally, as further explained below, the children believe there may be grounds for considering the 1983 divorce decree between Mr. Kerr and Frankie Nell Kerr to be null and void.

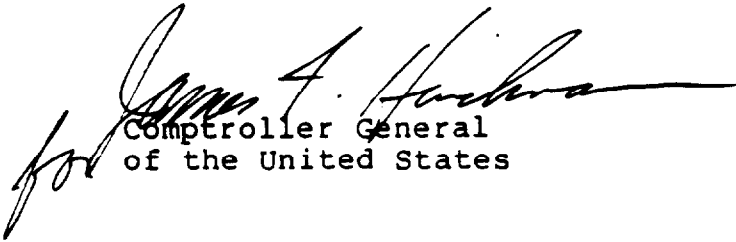
The third claimant, Mr. John K. Monroe, as conservator of the estate of Frankie Nell Kerr, alleges that Mr. Kerr procured the 1983 divorce decree through fraud by falsification of certain signatures and that the proper procedures for service of process on a person (Frankie Nell Kerr) in a state mental institution were not followed. Mr. Monroe also seeks our Office's assistance in resolving claims concerning Mr. Kerr's benefits under the Civil Service Retirement System and the federal workers' compensation program.

In cases of conflicting claims, we generally require either evidence sufficient to allow one claim and deny all others or a judicial determination by a court of competent jurisdiction establishing entitlement. See Kenneth W. Mitchell, B-209076, Aug. 25, 1983, and cases cited therein. This is especially true where, as here, the marital status of the deceased is in dispute and may be a factor in the determination of who is entitled to receive his unpaid compensation. See Petty Officer William E. Hamilton, 55 Comp. Gen. 533 (1975). Rather than resolve the present case solely on the written record, we believe that it would be better for a court of competent jurisdiction to resolve it, especially in view of the differing factual contentions. Since the Army clearly owes Mr. Kerr's unpaid compensation to someone, but is unsure of the proper claimant(s), an

interpleader procedure, if available, would seem appropriate. In this regard, we note that the claims for Mr. Kerr's Federal Employee Group Life Insurance were resolved in this manner.

In regard to the claims for money under the Civil Service Retirement System or the Federal Workers' Compensation Act, we note that the jurisdiction for those matters lies with the Office of Personnel Management and the Department of Labor, respectively. See 5 U.S.C. §§ 8124, 8347 (1982).

Accordingly, the Army should await receipt of an appropriate court order as to the disposition of the unpaid compensation of Mr. Kerr, or if deems it appropriate, the Army may initiate or participate in an interpleader action in order to resolve this matter.


Comptroller General
of the United States