



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

# Decision

**Matter of:** Laura L. Hughes - Claim for Survivor Benefits Plan Annuity

**File:** B-237767

**Date:** November 6, 1990

## DECISION

This is in response to an appeal of a Claims Group determination to deny a Survivor Benefit Plan (SBP) annuity to Laura L. Hughes, widow of Robert D. Hughes, USN (Retired). For the reasons presented below, the claim may be paid.

The record indicates that Mrs. Hughes shot Mr. Hughes during a domestic disturbance in Virginia in 1988. She later testified that she had pointed a gun at him but did not intend to kill him. Mrs. Hughes was indicted for murder, although the indictment was amended to involuntary manslaughter, the crime to which she pleaded guilty. The judge accepted her plea and Mrs. Hughes was placed in a "Community Diversion Program," in lieu of incarceration.

Entitlement to an SBP annuity is a matter controlled by federal law. See 10 U.S.C. § 1450. The Claims Group, in denying Mrs. Hughes claim, relied on the fact that in interpreting the law regarding entitlement to annuities and other benefits, our Office has consistently held that it is against public policy to allow payment by the government of benefits to an heir or beneficiary who feloniously kills the person upon whose death the benefits accrue. See, e.g., Major John R. Frazier (Retired) (Deceased), B-191953, July 3, 1978. In her appeal, Mrs. Hughes notes that the judge at her trial indicated that he believed the shooting accidental, as evidenced by the trial transcript.

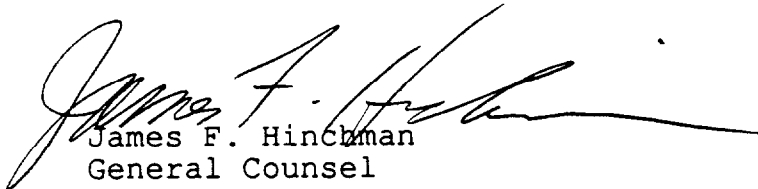
Involuntary manslaughter, a felony under the laws of Virginia, see Va. Code Ann. § 18-2-30, is an "accidental killing . . . contrary to the intention of the parties, during the prosecution of an unlawful, but not felonious, act, or during the improper performance of some lawful act. Gooden v. Commonwealth of Virginia, 226 Va. 565, 311 S.E. 2d 780, 784 (1984). Because a finding of intent thus is not required for involuntary manslaughter, neither a conviction nor an acquittal on the charge is dispositive of whether the claimant acted with felonious intent in the killing. See Sally Ann Morgan, B-193743, Sept. 28, 1979; B-188403, May 5, 1977.

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As counsel for Mrs. Hughes pointed out in pursuing her claim with the Navy, Mrs. Hughes' conviction does not establish felonious intent under Virginia law in the shooting of her husband: the conviction instead establishes an unlawful act on her part in pointing the gun at her husband just before the need to defend herself arose, and an accidental shooting. In sentencing Mrs. Hughes, the judge stated that although the law required punishment for the felony, he was satisfied from the facts he had heard that the shooting was accidental, and that even the prosecution conceded as much. The record also includes a newspaper account of the trial quoting the Assistant Commonwealth Attorney as stating his view that it was clear from the evidence that Mrs. Hughes never meant to kill her husband.

We are further persuaded as to Mrs. Hughes' intent and entitlement by the administrative decision of the Department of Veterans Affairs (VA) to pay VA benefits to Mrs. Hughes on the basis that all available evidence shows that the shooting was accidental.

In sum, the record supports a conclusion that Mrs. Hughes accidentally shot her husband, with a lack of felonious intent, and we accordingly reverse the Claims Group's decision. Mrs. Hughes is entitled to receive the SBP annuity in issue.

  
James F. Hinchman  
General Counsel