



Comptroller General  
of the United States

Washington, D.C. 20548

Putnam  
147969

## Decision

**Matter of:** Richard A. Davenport, Deceased

**File:** B-249708.2

**Date:** October 29, 1992

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### DIGEST

A federal employee designated his then spouse to receive any unpaid compensation due him at the time of his death on Standard Form (SF) 1150, Designation of Beneficiary for Unpaid Compensation, which was received in the agency in accordance with 5 U.S.C. § 5582 (1988). Later, he divorced her but did not change or revoke the designation. He remarried and his widow claims she is entitled to the unpaid compensation due at the time of his death. However, in the absence of a subsequent written designation by the employee received by the agency prior to his death, the designated beneficiary is entitled to the unpaid compensation. Accordingly, the claim of the employee's widow is denied.

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### DECISION

This decision is in response to competing claims by Ms. Jean E. Gray-Davenport, the surviving widow, and Ms. Patricia Ann Davenport, the former spouse, to the unpaid compensation due Mr. Richard A. Davenport, deceased.

Mr. Davenport was an employee of the Federal Aviation Administration (FAA), U.S. Department of Transportation, until his death on May 31, 1992. Previously, on June 10, 1976, Mr. Davenport executed Standard Form (SF) 1152, Designation of Beneficiary for Unpaid Compensation of Deceased Civilian Employee, in which he designated Patricia A. Davenport, wife, as the beneficiary of his unpaid compensation at the time of his death.

Mr. Davenport and Patricia A. Davenport were divorced on June 4, 1986, and he married Jean E. Gray on August 11, 1986.

Ms. Patricia Ann Davenport contends that the Designation of Beneficiary for Unpaid Compensation, SF 1152, duly executed by Mr. Davenport and filed with FAA on June 10, 1976, naming her as the beneficiary of his unpaid compensation is legal and binding on the Federal Government. She argues that

Mr. Davenport had almost 16 years to change the beneficiary of his unpaid compensation but elected not to do so. She explains that her former husband was meticulous with paperwork and legalities and intentionally chose this method to repay her for her own personal funds which he had spent during the early years of their 17-year marriage. Ms. Patricia Davenport, therefore, claims that she is entitled to payment of such benefits.

On the other hand, Ms. Jean E. Gray-Davenport argues that, due to the age of the SF 1152 executed by Mr. Davenport in 1976, and the subsequent divorce of Mr. Davenport and Patricia, with no provision for giving Patricia the unpaid compensation at that time, she is entitled to his unpaid compensation as the surviving widow. Her claim is supported by a statement from Jeff L. Davenport, the son of Richard A. Davenport, who states that his father assured him that his wife, Jean Gray-Davenport, would be the beneficiary of all his benefits from the government and that the government had on record that she would receive all of his death, health, and annual leave benefits.

The record also shows that on January 9, 1990, a Community Property Agreement was entered into by Richard A. Davenport and Jean E. Gray-Davenport whereby all property whether real, personal, or mixed and wheresoever situated then owned or thereafter acquired by either of them, including separate property, was declared to be community property and would, upon the death of either of them, immediately vest in fee simple in the survivor.

In addition, the record contains the last will and testament of Richard A. Davenport dated January 23, 1992, in which, in Article V, Mr. Davenport bequeathed the remaining residue and property, real and personal, of every kind and description, in his estate, to his wife, Jean Gray-Davenport, absolutely and in fee simple.

The disposition of unpaid compensation due an employee of the Federal Government is controlled by the provisions of 5 U.S.C. § 5582 (1988) which state that money due a deceased employee at the time of his death should first be paid to the beneficiary or beneficiaries "designated by the employee in a writing received in the employing agency before his death." If there is no such written designation, the statute then provides an order of precedence under which other individuals may be paid. Neither the statute nor the implementing regulations restrict an employee's power to change or revoke his beneficiary designation at any time.<sup>1</sup>

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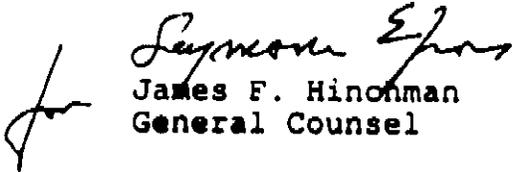
<sup>1</sup>See 5 U.S.C. § 5582(a); 4 C.F.R. Part 33 (1992).

We have consistently held that, if a deceased federal employee has designated a beneficiary to receive his unpaid compensation under 5 U.S.C. § 5582, payment may not be authorized to a person other than the designated individual.<sup>3</sup> We have also consistently held that the disposition of unpaid compensation or other amounts payable under federal law is governed exclusively by federal statute and regulation, and not by the laws and courts of the state of domicile or other jurisdiction.<sup>3</sup>

This Office has also held that a designation by will does not meet the statutory requirement that the designation be made by the employee to his employing agency prior to his death.<sup>4</sup> Hence, entitlement to the unpaid compensation of a deceased federal employee vests in the beneficiary designated under 5 U.S.C. § 5582 at the time of the employee's death, notwithstanding any competing claims presented by a surviving spouse or others.<sup>5</sup>

Here, Mr. Davenport possessed the right under section 5582(a) to freely designate the beneficiary of his unpaid compensation and to alter his choice at any time. He did not change or revoke his designation of Patricia A. Davenport to receive his unpaid compensation. Hence, Patricia's entitlement to such benefits became vested upon the death of Mr. Davenport. In the absence of a subsequent written designation of another individual by Mr. Davenport to receive his unpaid compensation, the original SF 1152 dated June 10, 1976, is a valid and proper designation of the individual entitled to receive such benefits.

Accordingly, based upon the evidence of record, Ms. Patricia A. Davenport is entitled to receive the unpaid compensation of Mr. Richard A. Davenport, deceased.

  
James F. Hinchman  
General Counsel

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<sup>2</sup>David H. Lambert, B-244826, Dec. 12, 1991; Gavno W. Scott, B-195158, Oct. 26, 1979.

<sup>3</sup>Chester F. Dean, B-227728, Mar. 23, 1988.

<sup>4</sup>B-169560, June 3, 1970.

<sup>5</sup>Chester F. Dean, *supra*. See Harold S. Fenner, 58 Comp. Gen. 644 (1979). See also Ridgway v. Ridgway, 454 U.S. 46 (1981); Ward v. United States, 646 F.2d 474, 477 (Ct. Cl. 1981).