



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Patricia V. Smith Anderson

File: B-248958

Date: November 9, 1992

DIGEST

The daughter of a deceased retired Air Force member is entitled to waiver of indebtedness for erroneous payments of retired pay she received after his death when the payments should have been terminated. Waiver is granted under 10 U.S.C. § 2774, since she had notified the Air Force of his death and was otherwise without fault.

DECISION

Patricia V. Smith Anderson appeals the denial by our Claims Group of her request for waiver of the government's claim against her for retired pay to her father, Master Sergeant Nicholas J. Vail, she erroneously received following his death. We reverse the Claim Group's denial.

MSgt. Vail retired from the Air Force on March 31, 1963 and died on June 24, 1988. However, his retired pay continued to be paid and deposited in his bank account until October 31, 1989. Since retired pay entitlement ceases when the retired member dies, payments totalling \$10,057.13 made after his death were erroneous. Unpaid arrears of retired pay reduced the amount of the government's claim to \$9,478.73.

Our Claims Group denied the request for waiver based on their finding that Mrs. Anderson had not notified the Air Force regarding her father's death, and should have questioned receiving checks made payable to her father, if she understood that she was herself the beneficiary. The Claims group concluded she was therefore at least partially at fault in the matter.

Section 2774 of title 10, United States Code, provides authority for waiving claims for erroneous payments of pay and certain allowances made to or on behalf of members or former members of the uniformed services, if collection of the claim would be against equity and good conscience and not in the best interests of the United States. Generally, these criteria are met by a finding that the claim arose from administrative error with no indication of fraud,

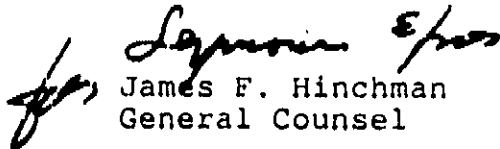
fault, misrepresentation, or lack of good faith on the part of the member or any other person having an interest in obtaining the waiver.

In her appeal of the Claims Group's settlement, Mrs. Anderson states that she did in fact advise the Air Force of her father's death by calling March Air Force Base in Riverside, California. She indicates they took note of the information she provided. She also talked to March Air Force Base personnel about transporting her father's remains to his place of burial in Minnesota. She further states that the Air Force was aware of his death because he had a military funeral and a military headstone. She also had a death certificate signed by a Veterans Administration doctor who had treated Msgt. Vail. Finally, she states that she called "Denver" (we assume this was the Defense Finance and Accounting Service) to confirm she was designated as his beneficiary, and therefore entitled to any benefits paid on his behalf.

While it appears she was confused as to the type of benefits she was entitled to receive because of her status as Msgt. Vails' listed beneficiary, we believe she was relying on the advice of the Air Force that she, as beneficiary, would be receiving certain benefits, when she retained the retired pay checks.

Here, we find that Mrs. Anderson is entitled to waiver since she did notify the Air Force and sought to confirm she was the beneficiary of Msgt. Vail's military benefits.

Accordingly, we find that Mrs. Anderson was not at fault in the matter and, based on the facts as presented, we waive the debt. Betty L. Palajo Carr, B-233390, July 6, 1989.


James F. Hinchman
General Counsel