

DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

60658

FILE: B-185207

DATE: MAR 19 1976

MATTER OF:

Mr. Arnold S. Barrett, deceased

98467

DIGEST:

1. Mother of deceased member is not entitled to unpaid pay and allowances due in the case of her late son, since decedent was survived by a minor daughter, and under 10 U.S.C. 2771, the child of decedent stands in a higher order of precedence than mother of decedent.
2. Since child of decedent is minor, mother may receive payment of unpaid pay and allowances as natural guardian of child for purposes of 10 U.S.C. 2771(a)(3).

This action is in response to a letter from Mrs. Thomas R. Swift requesting reconsideration of our Memorandum and Claims Division (now Claims Division) settlement dated June 3, 1975, which disallowed Mrs. Swift's claim for the unpaid pay and allowances due in the case of her late son, Mr. Arnold S. Barrett (former captain, United States Army), deceased on February 26, 1974.

The file shows that Mrs. Swift's claim was disallowed for the reason that since the decedent was survived by a minor daughter, Pamela Kaye Barrett, the natural guardian of the decedent, Mrs. Jacquelyn Kaye Trigg, the former wife of the decedent, Pamela, not Mrs. Swift, qualifies as the person named in the list contained in 10 U.S.C. 2771, who is to receive the unpaid pay of deceased military member's dependents.

In her current letter, Mrs. Swift repeats her claim for the unpaid pay and allowances, stating that her ex-husband-in-law does not want the money and that Pamela has everything she needs and more. On such basis, Mrs. Swift urges payment to herself of the unpaid pay and allowances due her late son.

Notwithstanding the foregoing, by letter dated September 15, 1975, to our Office, Mrs. Trigg has now asserted claim on behalf of her daughter, Pamela, and states therein that the money, when received, would be put in an account already set up, for the sole use and benefit of her daughter.

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With regard to the distribution of unpaid pay and allowances due a deceased member of an armed force, subsection 2771(a) of title 10, United States Code, provides in pertinent part that in the final settlement of accounts of a member who dies after December 31, 1955, the amount due shall be paid to the person highest on the following list living on the date of the member's death:

"(1) Beneficiary designated by him in writing to receive such amount, if the designation is received, before the deceased member's death, at the place named in regulations to be prescribed by the Secretary concerned.

"(2) Surviving spouse.

"(3) Children and their descendants, by representation.

"(4) Father and mother in equal parts \* \* \*."

There is nothing in the record to show that the member designated a beneficiary in this case. Likewise, the remaining order of precedence set forth in the regulations is followed by our Office in the disposition of the member's unpaid pay and allowances.

Since the record shows that the member was divorced from Jacquelyn in June 1970, she is not eligible as a "surviving spouse", as set out in clause (2). Further, the claim which she asserts as natural guardian of the child's estate, Paul de Noye Barrett, may not be recognized as being within the contemplation of clause (3), that is, as being the child of a child, as child of the decedent.

Settlement will be issued on that basis, and in view thereof, no basis exists for consideration of Mrs. Wolfe's claim in the matter.

R. P. KELLER

Deputy Comptroller General  
of the United States