

## DECISION

THE COMPTROLLER GENERAL  
OF THE UNITED STATES

WASHINGTON, D. C. 20548

FILE: B-185464

DATE: AUG 3 1976

MATTER OF: CSC1 , USN, Retired (Deceased)

DIGEST: Unpaid retired pay due upon death of Navy member who died without designated beneficiary or relatives may not be paid to his state court appointed committee which had custody of his property during his lifetime since authority of committee ceased upon member's death and committee is not the legal representative of his estate as prescribed by 10 U.S.C. 2771(a) (1970). However, claim for retired pay from legal representative of estate will be considered upon presentation.

This action is in response to a letter received in this Office on November 19, 1975, from Ms. Tina Ambrosini, Brooklyn, New York, committee of CSC1 , USN, , Retired (Deceased), requesting review of the March 12, 1975 settlement of our Transportation and Claims Division which disallowed the claim of Ms. Ambrosini for retired pay due Mr. Higgins at the time of his death.

The record indicates that was placed on the retired list of the United States Navy on May 1, 1951, with entitlement to retired pay. By letter dated April 3, 1970, from the Patient Resource Agent, Kings Park State Hospital, Department of Mental Hygiene, State of New York, the Navy Finance Center was advised that had been admitted to that hospital on July 1, 1969, and continued to be in residence there. That letter also indicated that retired paychecks were continuing to be sent to an address in Brooklyn, New York, where they may have been intercepted by a friend, and it was requested that the checks be sent to in care of the director of the hospital. Based on that letter the Navy Finance Center discontinued payments of retired pay to , effective April 1, 1970. By letter dated June 5, 1970, from the hospital the Navy Finance Center was advised that doctor did not find

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him mentally competent to endorse checks; apparently therefore, payments of retired pay to \_\_\_\_\_ remained suspended.

In subsequent correspondence dated August 26, 1970, and May 4, 1971, the Navy advised the hospital that pursuant to 37 U.S.C. 601-604 (1970), the Navy is required to suspend payment of retired pay to a member found to be incapable of handling his financial affairs. It was pointed out that under those provisions of law the Secretary of the Navy may appoint a trustee for such a member under certain circumstances to which the retired pay may be paid; however, apparently the hospital could not furnish the necessary information for the Navy to appoint such a trustee. Therefore, since 37 U.S.C. 601-604 does not apply in any case in which a court of competent jurisdiction has appointed a legal committee, guardian, or other representative, it was suggested by the Navy that it would be in the best interest of Mr. Higgins to have a committee appointed for him by a state court.

Apparently that advice was followed and Ms. Tina Ambrosini was appointed committee of the person and property of \_\_\_\_\_ by the Supreme Court of Kings County, New York, by an order of August 1, 1972.

It appears that in February 1973 the Navy Finance Center received a copy of the court order but before payments of retired pay could be reinstated, \_\_\_\_\_ died on March 19, 1973. As a result, there was unpaid retired pay due \_\_\_\_\_ at the time of his death for the period of April 1, 1970, through March 19, 1973.

Ms. Ambrosini, as committee for \_\_\_\_\_ filed a claim dated March 25, 1974, with the Navy Finance Center for the unpaid retired pay. Enclosed with the claim was a bill marked paid in the amount of \$600 for \_\_\_\_\_ funeral expenses, which Ms. Ambrosini states was paid from funds at the hospital, and an unpaid claim for \$24,640.58 by the hospital against Ms. Ambrosini as committee for \_\_\_\_\_ for his hospital care.

Ms. Ambrosini's claim was forwarded to our Claims Division by the Navy Finance Center for settlement as a doubtful claim since Ms. Ambrosini is not the legal representative of \_\_\_\_\_ estate. It was stated in the Navy referral letter

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that                    had no beneficiary or relatives at the date of his death.

In the March 12, 1975 settlement Ms. Ambrosini was advised that since her appointment as committee for                    did not authorize her to act as the legal representative of his estate after his death, under the provisions of law governing the settlement of the accounts of deceased members of the Armed Forces (10 U.S.C. 2771(1970)), her claim must be disallowed.

In her letter appealing that settlement Ms. Ambrosini indicates that since she had been appointed as committee for                    before his death, she was entitled while he was living to receive all of his assets on his behalf including his retired pay. She further indicates that she did not receive the accrued retired pay prior to                    death because of administrative delays by the Government which were not her fault. On that basis she claims the unpaid retired pay. We have also received correspondence from Julius J. Cardile, Counselor at Law, on Ms. Ambrosini's behalf, and from the New York State Department of Law, to the same effect as Ms. Ambrosini's letter.

The settlement of the account of a deceased member of the Armed Forces, including a retired member, must be made in accordance with the provisions of 10 U.S.C. 2771(1970), subsection (a) of which provides that an amount due from the armed force of which he was a member shall be paid to the person highest on the following list living on the date of death:

- "(1) Beneficiary designated by him in writing to receive such an amount \* \* \*.
- "(2) Surviving spouse.
- "(3) Children and their descendants, by representation.
- "(4) Father and mother in equal parts or, if either is dead, the survivor.
- "(5) Legal representative.

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"(6) Person entitled under the law of the domicile of the deceased member.

Although Ms. Ambrosini would appear to have been entitled to receive [redacted] retired pay as his committee while he was living, such pay was not paid during his lifetime and, therefore, is now "an amount due from the armed force of which he was a member" within the meaning of 10 U.S.C. 2771 and must be paid in accordance with that statute. Compare 33 Comp. Gen. 99 (1953). The fact that Ms. Ambrosini did not receive the retired pay due to administrative delay, or otherwise, does not affect the operation of 10 U.S.C. 2771 in this case.

Since [redacted] designated no beneficiary for his unpaid retired pay and had no relatives living on the date of his death, his unpaid retired pay would be payable to the next person on the statutory list, the legal representative of his estate. As was indicated in the March 12, 1975 settlement, under New York law it appears that Ms. Ambrosini's authority as committee for other than to provide for his burial and render an accounting, ceased upon his death and Ms. Ambrosini is not the legal representative of his estate. See *In re Scheidig*, 143 N.Y.S. 2d 150, 152 (Sup. Ct. 1955); *In re [redacted] Estate*, 136 N.Y.S. 2d 685, 687 (Sup. Ct. 1954); *In re [redacted]*, 88 N.Y.S. 2d 215, 224 (Sup. Ct. 1949); and McKinney's Consolidated Laws of New York Annotated, Mental Hygiene Law § 112(2) (1971). Accordingly, we may not authorize payment of [redacted] unpaid retired pay to Ms. Ambrosini and, therefore, the settlement disallowing her claim is sustained.

Upon appointment as administrator of [redacted] estate under applicable New York law, it would appear that the person so appointed, in his capacity as legal representative of [redacted] estate, would be the proper party to present a claim for the unpaid retired pay. Compare 52 Comp. Gen. 113 (1972) and 33 Comp. Gen. 346 (1954).

R.F. KELLER

Deputy

Comptroller General  
of the United States