



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

NOV 3 1968

CLAIMS DIVISION

Z-2804368

B. ~~193449~~-----

The Comptroller General

We are forwarding the claim for the unpaid pay and allowances due Paul L. Fitzgerald, Jr., deceased.

On February 3, 1967, Paul L. Fitzgerald, Jr., completed DA Form 41, designating his mother as beneficiary for gratuity pay if no surviving spouse or child, item 14 on the form. For item 15, beneficiary for unpaid pay and allowances, he stated "Same". For item 16, person to receive allotment if missing, he stated "Same". On April 1, 1967, Osland T. Fitzgerald was born. Paul L. Fitzgerald, Jr., completed the birth certificate and signed as father of the child.

On October 19, 1967, Mr. Fitzgerald was declared missing in action. On March 20, 1978, the Department of the Army determined that the member was presumed dead. Two claims were filed for the unpaid pay and allowances due Mr. Fitzgerald, Mrs. Ida M. Fitzgerald, his mother, and Lillie M. Postel, the guardian of Osland T. Fitzgerald.

The Comptroller General has held that where a service member designates an individual on DA Form 41 as beneficiary for gratuity pay if no surviving spouse or child, the insertion of "Same" on the line for designating the beneficiary for unpaid pay and allowances establishes that the service member intended the beneficiary for unpaid pay and allowances to take only if there was no surviving spouse or child. B-172904, July 2, 1972, April 14, 1972. However, we were advised in B-177541-O.M., March 7, 1973, that where the service member had no spouse at the time of his designation, we could not assume that the service member intended that the designation of the individual to receive arrears of pay would be effective only if he was not survived by a spouse or a child. In that case, we were authorized to pay the designated beneficiary.

In the present claim, we could conclude that the deceased service member had no child at the time of his designation of beneficiaries, and therefore, payment of the unpaid pay and allowances should be made to his mother, the designated beneficiary. However, since the child's

C Brown
PLH

12251

mother was approximately 7 months pregnant on the date the deceased service member completed the DA Form 41 and he admitted paternity when he completed the birth certificate in April 1967, we have doubt as to whom the payment should be made. Accordingly, we are referring the matter to you for consideration. The adjudicator handling the claim is Arthur James, whose extension is 53218.

Arthur
Chief, Payment Branch

(Indorsement)

B-193449-O.M.

December 11, 1979

Director, Claims Division

✓ Returned herewith is file Z-2804368 covering the claims of Ms. Lillie Postell, as guardian for Osland Tyronica Fitzgerald, and Mrs. Ida Mae Fitzgerald for the [unpaid military pay and allowances] of Sergeant Paul L. Fitzgerald, Jr., USA (deceased). 2

Also transmitted herewith is an instrument executed on August 28, 1979, by both claimants in which they agree to divide equally the unpaid pay and allowances of Sergeant Fitzgerald. That instrument was executed after the claimants were advised by us of the amount payable and the provisions of 10 U.S.C. 2771. In the circumstances it is our view that the Settlement Agreement executed by the claimants will estop either should either of them in the future assert a claim for the full unpaid pay and allowances of Sergeant Fitzgerald.

Accordingly, since Ms. Postell has been properly appointed guardian of the child, settlement should be issued for one-half of the unpaid pay and allowances of Sergeant Fitzgerald to Ms. Postell, as guardian, and one-half to Mrs. Fitzgerald.

Milton J. Socolar
Milton J. Socolar
General Counsel
Wage + Salary claims

This is not resubmitted per Allen H. H. again 1/9/80 per Sharon

008017