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

B-203601

July 27, 1981

The Honorable John W. Warner
United States Senate

Dear Senator Warner:

Further reference is made to your letter of May 27, 1981, with enclosures, asking us to review the Department of the Navy's decision not to issue a dependent's identification card for Noemi Baldwin, as wife of Lieutenant Commander Merritt W. Baldwin, Jr., U.S. Navy, Retired.

The Navy's decision was based upon the circumstances surrounding Commander Baldwin's divorce from Evelyn Baldwin which was obtained on February 25, 1974, in the Court of First Instance, Santo Domingo, Dominican Republic. The Navy has stated that its determination was guided by our decisions which conclude that a divorce decree obtained in a foreign country by United States citizens not domiciled in that country will not be given effect unless affirmed by a United States court of competent jurisdiction. The Navy decision, was based on the conclusion that neither party to the divorce proceedings was domiciled in the Dominican Republic. This is further evidenced by a translation of the divorce decree which states that both parties were domiciled in the State of Maryland. As a result, both the member's divorce and his subsequent marriage are subject to challenge, and it was for this reason that an identification card was not issued to Noemi Baldwin.

The issuance of the Uniformed Services Identification and Privilege Card, however, is a matter primarily within the jurisdiction of the service concerned. In the case of dependents of retired members, it is apparently used primarily to gain access to military medical services and commissaries. See DOD Instruction No. 1000.13, July 16, 1976. As to determining dependency for medical benefits, 10 U.S.C. 1072 (1976), defines "dependent" to include a member's "wife." Under 10 U.S.C. 1084 (1976), a determination of dependency for medical care purposes by the Secretary of Defense is conclusive and may not be reviewed by a court or our Office in the absence of fraud or gross negligence. Authorization to use commissaries and other similar nonappropriated fund facilities is controlled by the services under regulation. It appears, however, that the Navy follows our decisions which involve monetary entitlements in determining the validity of foreign divorces.

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As the Navy has stated, we have consistently taken the position that foreign divorce decrees are of doubtful validity. Therefore, we have refused to recognize divorces between United States citizens obtained in foreign countries unless such divorce, or subsequent remarriage of one of the parties, has been upheld by a court of competent jurisdiction in the United States. See 55 Comp. Gen. 533 (1975); 36 Comp. Gen. 121 (1956); 25 Comp. Gen. 821 (1946). Only one State, New York, has recognized the validity of foreign divorce decrees as a matter of international comity.

We have recognized this exception to the general rule. 47 Comp. Gen. 286 (1967), as modified by 49 Comp. Gen. 833 (1970). The appellate courts of Virginia have not adopted the New York view. See, generally, 13 ALR 3d 1419. While, of course, we cannot predict with absolute certainty how a court will rule in any particular case, in view of the doubtful validity of the Dominican Republic divorce decree under the law of the state having jurisdiction, we cannot authorize payments based on such a divorce.

Thus, the Navy's determination in this case appears to be consistent with the principles set forth in our previous decisions. However, as the letter of March 23, 1981, from the Navy Family Allowance Activity indicates, Lieutenant Commander Baldwin can resolve all questions with respect to his marital status by pursuing the matter with a court of competent jurisdiction in this country.

We hope this information is responsive to your inquiry and we regret that it could not be more favorable to your constituents. The enclosures accompanying your letter are returned as requested.

Sincerely yours,

MILTON J. SOCOLAR

Acting Comptroller General
of the United States

Enclosures

Digest

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Navy decision not to award dependent's identification card to retired member's wife appears proper since member's previous divorce was obtained in the Dominican Republic. As a general rule, divorce decrees issued in foreign countries to United States citizens not domiciled in that country will not be recognized unless such divorce or subsequent remarriage has been upheld by a court of competent jurisdiction in the United States .