

GURITZ  
PLM2

# DECISION



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

FILE: B-204367

DATE: August 1, 1986

MATTER OF: Petty Officer First Class Bennie B. Paradise,  
USN (Retired) (Deceased)

## DIGEST:

A married Navy petty officer who retired prior to the effective date of the Survivor Benefit Plan (SBP) entered into a ceremonial marriage after attempting to dissolve his existing marriage through invalid foreign divorce proceedings, and he then elected SBP coverage for his alleged second spouse, listing her by name on the election form. Since his election into the SBP was under subsection 3(b) of Public Law 92-425, which required an affirmative election to participate in the SBP, and since the person for whom he elected the annuity was not his lawful wife, his election into the SBP was invalid and no annuity is payable.

The question presented in this matter is whether a Survivor Benefit Plan annuity is payable to either of two claimants as the "eligible widow" of a retired Navy petty officer.<sup>1/</sup> In view of the facts of record, and the applicable provisions of law, we conclude that neither claimant is entitled to the annuity.

## Background

Petty Officer First Class Bennie B. Paradise, USN (Retired) (Deceased), married Rita Rom in August 1949. He retired from the Navy in June 1970. In August 1970 he obtained a Mexican divorce, and in October 1970 he married Mary Anne Gaylord.

In 1972 the Survivor Benefit Plan was established as an income maintenance program for the surviving dependents of deceased service members, through the enactment of Public Law 92-425, September 21, 1972, 86 Stat. 706, as amended and

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<sup>1/</sup> This action is in response to correspondence received from the Commander of the Navy Finance Center.

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as currently codified, 10 U.S.C. §§ 1447-1455. Under the Plan, the spouses of members on active duty at the time the Plan became effective were automatically covered under the Plan, unless the member elected otherwise upon retirement. Subsection 3(b) of Public Law 92-425 gave service members like Petty Officer Paradise who had retired prior to the effective date of the enactment an opportunity to elect participation voluntarily in the program. On June 13, 1973, Petty Officer Paradise executed a Survivor Benefit Plan Election Certificate stating that he was married, listing "Mary Anne Paradise" as his spouse, and electing "spouse only" coverage under the Plan.

Petty Officer Paradise died in March 1981. At the time of his death, he and Mary were permanent residents, or domiciliaries, of the State of Ohio. Rita was a domiciliary of the State of California.

In a 1982 decision in this matter, we held that in the absence of a determination of the marital status of Petty Officer Paradise by a court of competent jurisdiction in the United States, the answer to the question of whether Rita or Mary should be recognized as his surviving spouse was too uncertain to permit payment of an annuity.<sup>2/</sup> It has now been brought to our attention that on April 18, 1985, the Court of Common Pleas in the State of Ohio entered a final judgment stating that since "Bennie B. Paradise did not establish a domicile or a bona fide residence in Mexico," the Mexican divorce he obtained in 1970 was void, and consequently Rita remained his lawful spouse at the time of his death in 1981. The concerned officials of the Navy Finance Center now ask what effect should be given to the state court's judgment.

#### Analysis and Conclusion

It is our view that in this case the Court of Common Pleas in Ohio was a court of competent jurisdiction to resolve the issue of the marital status of the claimants, since one of them is domiciled in Ohio and, in addition, Petty Officer Paradise was an Ohio domiciliary at the time

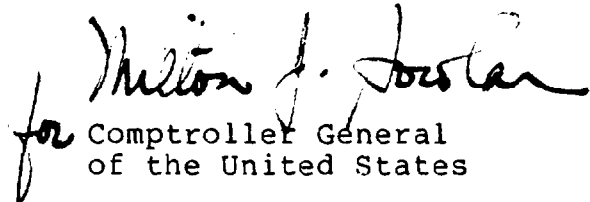
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<sup>2/</sup> Petty Officer First Class Bennie B. Paradise, USN (Retired) (Deceased), B-204367, April 6, 1982.

of his death. Both parties were represented by counsel in the proceeding. Hence, we will abide by the final judgment rendered that Petty Officer Paradise's 1970 Mexican divorce was invalid, and that as a result Rita and not Mary is to be recognized as his surviving spouse.

It thus appears that Petty Officer Paradise was never lawfully married to Mary Anne Gaylord, whom he listed as his spouse on the Survivor Benefit Plan election form in 1973. The validity of the designation is dependent upon subsection 1450(a)(1) of title 10, United States Code, which provides that the monthly annuity under the Survivor Benefit Plan shall be paid to "the eligible widow." See also 10 U.S.C. § 1447(3). Because he was never legally married to Mary Anne Gaylord, she is not an eligible beneficiary as his "widow" under the Plan. Also, since he filed an election for spouse coverage for someone other than his lawful spouse, his election was invalid as to spouse coverage, and consequently Rita Paradise also is not entitled to an annuity under the Plan.<sup>3/</sup>

Since Petty Officer Paradise's participation in the SBP was erroneous, the amounts deducted from his retired pay as the cost of coverage should be paid to the proper beneficiary under 10 U.S.C. § 2771.

  
for Comptroller General  
of the United States

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<sup>3/</sup> To identical effect, see Shaff v. United States, 695 F. 2d 1138 (9th Cir. 1983), cert. denied, 464 U.S. 821 (1983); Chief Warrant Officer Donald R. Bethel, USA (Deceased), 63 Comp. Gen. 63 (1983), and Staff Sergeant Roger A. Cline, USA (Retired) (Deceased), 57 Comp. Gen. 426 (1978).