



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Widow's Claim for Unpaid Retired Pay and Survivor
Benefit Plan Annuity

File: B-233351

Date: July 27, 1989

DIGEST

Widow of a retired Army member claims entitlement to an annuity under the Survivor Benefit Plan and unpaid retired pay due at the time of his death. In connection with his death, she entered a plea of guilty to involuntary manslaughter but was not adjudged guilty, instead entering the state's first offender program. The claim, based on the argument that the widow was temporarily insane at the time of the incident, is disallowed because the record does not reasonably demonstrate the absence of felonious intent in light of the guilty plea and the absence of any fact-finding proceedings establishing that the killing was accidental, in self-defense or otherwise justifiable.

DECISION

This decision is in response to an appeal by a retired Army officer's widow challenging our Claims Group's denial of her claim for unpaid retired pay and an annuity under the Survivor Benefit Plan (SBP) as the designated beneficiary and surviving spouse. The claimant had shot her husband and, on the basis that she should not benefit from that act, our Claims Group found that the Army properly had made payments to the deceased's children. The basis for appeal is the contention that the claimant was temporarily insane at the time of the incident.

We find that the Claims Group's decision was proper.

BACKGROUND

The claimant and the decedent were first married in April 1952, but that marriage ended in divorce in 1978. They were remarried on January 2, 1982. On September 19, 1982, at their home in Duluth, Georgia, the claimant shot her husband in the chest causing his death. A psychiatric report in the record, based on evaluations of both the

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claimant and her husband 6 days before the incident, indicates that the marriage was "stormy" and marked by a history of severe disturbances in the husband's behavior. The psychiatrist recounts that the claimant's ability to function responsibly was severely compromised by her husband's illness. In an opinion issued to the claimant's attorney in June 1983, a psychiatrist who began treating the claimant right after the shooting stated his understanding that the shooting followed an evening of "prolonged, extensive abuses" of the claimant by her husband. In support of her appeal, the claimant has furnished a September 1988 letter from that same psychiatrist in which he states that at the time of the shooting the claimant was unable to know the difference between right and wrong.

In March 1984, however, the claimant entered a plea of guilty to involuntary manslaughter, a felony under Georgia law at Ga. Code Ann. § 26-1103(a). She was placed on probation for 5 years but, in accordance with Georgia's First Offender statute, Ga. Code Ann. § 27-2727 through § 27-2732, no adjudication of guilt was entered. Assuming that the claimant fulfills the terms of her probation and/or is released, she will be discharged without an adjudication of guilt and thereby "completely exonerate[d] . . . of any criminal purpose," and will not be considered to have a criminal conviction. Ga. Code Ann. § 27-2728.

DISCUSSION

Entitlement to unpaid retired pay due at the member's death and an annuity under the SBP are matters controlled by federal statute. See 10 U.S.C. § 2771 and 10 U.S.C. § 1450, respectively. In interpreting the law surrounding such statutory entitlements, our Office has held on numerous occasions that it is against public policy to permit the payment by the government of benefits to an heir or beneficiary who feloniously kills the person upon whose death the payments became due. See, e.g., Deceased Coast Guard Captain, B-215304, July 23, 1984; Major John R. Frazier, B-191953, July 3, 1978; 34 Comp. Gen. 103 (1954); 13 Comp. Gen. 72 (1933).

We have declined to authorize payment to the person involved in the death, even in cases where that person has not been convicted of criminal charges, if the facts do not reasonably establish a lack of felonious intent on that person's part. See 55 Comp. Gen. 1033 (1976). We have, however, allowed payment where there has been an acquittal of criminal charges, barring other strong evidence that the killing was not accidental, not in self-defense and not

otherwise excusable or justifiable. Deceased Coast Guard Captain, B-215304, supra. In cases where payment has been authorized, the record generally established the heir's or beneficiary's lack of felonious intent with reasonable clarity. See Major John R. Frazier, B-191953, supra.

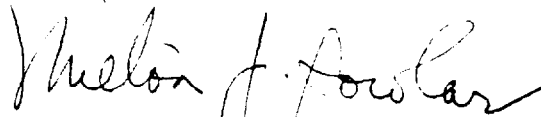
Initially, we point out that the application of Georgia's First Offender statute to the claimant is not relevant to her entitlement to payment. The statute is not concerned with her intent in committing the offense, which is the central issue on which eligibility for an SBP annuity and unpaid military pay turns.

As to this central issue, the record before us does not establish lack of felonious intent on the claimant's part. As noted above, the husband/wife evaluation was conducted 6 days before the shooting, and the claimant's psychiatrist's understanding of the events the night of the incident is nowhere supported in the record by, for example, medical or police reports. Further, although the claimant's psychiatrist concluded that the claimant was temporarily insane when she shot her husband, the fact is that the claimant did not plead not guilty by reason of insanity in the Georgia court, but instead pled guilty to involuntary manslaughter. Finally, there is no verdict by a trier of fact to support either the version of the incident related by her psychiatrist, or the psychiatrist's opinion. Contrast B-172014, October 7, 1971, in which we endorsed payment to a spouse who killed her Marine Corps husband where she was acquitted of any criminal charges on the basis of temporary insanity.

As stated above, where the beneficiary or heir causes the member's death, public policy dictates that the record reasonably establish a lack of felonious intent with respect to the crime--there must be a showing of entitlement notwithstanding the claimant's actions, as opposed to the record having to establish felonious intent before payment will be withheld. On the record before us, we cannot conclude that the psychiatrists' unsupported statements and opinions regarding the claimant's mental responsibility establish her entitlement to the amounts claimed. Unpaid

pay therefore properly was payable to the decedent's children, and the claimant is not entitled to the SBP annuity.

The Claims Group's decision is affirmed.

A handwritten signature in cursive script, appearing to read "Melvin J. Fowler".

Acting Comptroller General
of the United States