



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Ms. Grace M. Sligar

File: B-242852

Date: June 14, 1991

DIGEST

Claimant who presented a final judgment by a court of competent jurisdiction and other evidence of a valid common law marriage existing between herself and a retired armed services member for over 1 year before the member's death is eligible to receive military survivor's benefits.

DECISION

This responds to a request for reconsideration of an action by our Claims Group denying the claim of Grace M. Sligar for payment of a Survivor Benefit Plan (SBP) annuity under 10 U.S.C. § 1447 *et seq.* (1988), as the widow of Dolan J. Sligar, USN (deceased). After consideration of the additional evidence submitted, we hereby authorize payment.

Mr. Sligar retired from the U.S. Navy on April 1, 1976, and elected SBP coverage for his spouse and children. At that time he was married to Mary Sligar. Although a ceremonial marriage between Dolan and Grace was performed in Nevada on September 21, 1980, Dolan did not obtain a divorce from Mary until October 30, 1985. The ceremonial marriage accordingly was void. Dolan and Grace moved from Texas where they lived at the time of the divorce to Kansas in July 1987. Dolan died in Kansas on February 7, 1988. In response to Grace's claim for SBP benefits, our Claims Group advised the Navy Finance Center that in the absence of a judgment by a court of competent jurisdiction that a valid marriage exists between Dolan and Grace, or the submission of other evidence, payment to Grace would not be allowed.

In her reconsideration argument, Grace claims that she and Dolan became married at common law subsequent to the divorce and she has provided an order admitting Dolan's will to probate dated June 20, 1989 in a Kansas District Court which finds as fact that Grace is the surviving spouse of the decedent. The order is accompanied by a letter from the presiding judge which reads in part:

" . . . that it was my conclusion that Dolan Jean and Grace Marie Sligar were partners in a valid common law marriage under the laws of the State of Kansas. I came to that conclusion with full knowledge of the fact that they were ceremonially married while Dolan Jean was still legally married to another but that they continued living together as husband and wife even after that earlier marriage was formally dissolved."

Also submitted is a copy of the probated will dated January 26, 1987 in Texas in which Dolan states that he is married to Grace and which refers to Grace as his wife; an application for an armed services dependent identification card executed November 19, 1985 in Texas in which Dolan identifies Grace as his wife; a deed of trust for the purchase of a home in Texas executed June 20, 1986 in the name of "Dolan Jean Sligar and Wife, Grace Marie Sligar;" and a statement by Grace indicating that she and Dolan lived as husband and wife from the time of the ceremonial marriage until Dolan's death.

To be eligible for an SBP annuity, Grace must have been married to Dolan for 1 year before his death.^{1/} Because he was married to someone else when his ceremonial wedding to Grace took place, a question of the validity of his marriage arises.

The District Court of Kansas has original jurisdiction over validity of marriages and probate matters in Kansas.^{2/} Since both Dolan and Grace were domiciled in Kansas at the time of Dolan's death, the District Court had jurisdiction to determine their marital status. See Matter of Paradise, B-204367, Aug. 1, 1966. In Kansas, findings in an order admitting a will to probate are final judgments which carry a conclusive presumption of verity.^{3/} We therefore recognize the validity of the Kansas court's finding that Grace was Dolan's spouse.

Because Dolan and Grace resided in Kansas for less than a year before Dolan's death, it is necessary to decide whether Dolan and Grace were married by February 7, 1987, 1 year before

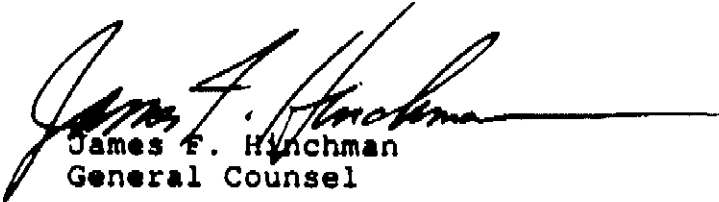
^{1/} See 10 U.S.C. § 1447(3) (1988) and 56 Comp. Gen. 1022 (1977).

^{2/} Kan. Stat. Ann. § 20-301; § 20-335 (1988). See also Matter of Cowan, B-186676, Oct. 28, 1976.

^{3/} Kan. Stat. Ann. § 59-2401(a)(1); § 60-1701.

Dolan's death. Texas law provides that dissolution of a prior marriage causes an unlawful marriage to become valid from the date the prior marriage is dissolved if the parties live together as husband and wife and represent themselves to others as being married.^{4/} From 1985 to July 1987 the couple resided in Texas representing themselves as a married couple in important financial and personal matters. Dolan's divorce had been finalized, and the will relied on by the Kansas Court as evidence of the marriage had been executed. Nothing changed during the last year of Dolan's life that might prompt different conclusions about the Sligar's marital status during the their last months in Texas.

In view of the evidence presented, we find that the final judgment of the Kansas District Court provides a resolution of all doubtful issues that is sufficiently conclusive to serve as an acceptable basis to recognize the validity of Dolan and Grace's marriage during the last year of Dolan's life. We therefore find Grace Sligar to be an "eligible widow" for the purposes of receiving SBP benefits incident to her husband's death.


James F. Hinchman
General Counsel

^{4/} See Tex. Fam. Code Ann. § 2.22 (Vernon 1975). See also Papoutsis v. Trevino, 167 S.W.2d 777 (Tx. 1943); Caddel v. Caddel, 486 S.W.2d 141 (Tx. 1972).