



United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-249668

February 8, 1993

Melvin G Turner
Attorney at Law
200 Jefferson, Suite 250
Memphis, TN 38103

Dear Mr. Turner:

This is in response to your appeal of Claims Group settlement Z-2862420, dated August 2, 1991, on behalf of Ms. , which denied her claim for a death gratuity and the unpaid compensation of her former husband, Fire Controlman 3 USN (Deceased). We have reviewed the matter carefully and have decided to affirm the Claims Group's determination.

The record before us indicates that FC3 died of a gunshot wound on January 3, 1986, and that Ms. fired the shot which caused this injury. You have provided us with a bill of indictment which indicates that a grand jury chose not to indict Ms. for voluntary manslaughter in FC3 death.

It is a well settled principle that one who is involved in the death of another should not benefit from that person's death. We applied that principle in 34 Comp. Gen. 103 (1954), in which we dealt with a woman who stabbed her husband.

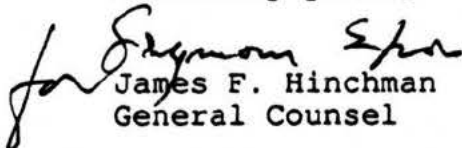
Where a grand jury chooses not to indict an accused surviving spouse, our rule has been to deny the surviving spouse's claim for a death gratuity, unless the grand jury's refusal to indict explicitly negates felonious intent on the part of the surviving spouse. See 34 Comp. Gen 103. However, because grand jury proceedings are conducted in secret, and because the reasons for grand jury determinations are not generally disclosed, a rule which depends on establishing the reasons a jury did not return an indictment is likely to prove impractical in many cases. We are therefore prepared, in cases where a grand jury does not indict and provides no reasons for its decision, to consider fully all the facts and circumstances in the record before us in reaching a conclusion on the question of intent.

In the record of this case, we find no indication whether the grand jury based its determination not to indict Ms. on reasons which might assist in resolving the question of Ms. intent. We therefore must turn to the facts and circumstances of FC3 death, as contained in the record before us. FC3 was on authorized leave visiting his wife at their home in Memphis. The death ensued after a late night argument over whether she should accompany him to California, where he was based. Ms. told the police her husband had beaten, choked, and raped her, and then taped her ankles and arms to keep her from leaving the house while he slept. A scuffle ensued, during which a pistol obtained by Ms. exchanged hands between FC3 and his wife. The pistol was at one point thrown to the floor by FC3. Subsequently Ms. regained possession of the pistol and fired the shot that fatally injured FC3. She then reported to the police that she had shot her husband. These facts stand undisputed in the record.

While the facts of this case as we understand them do not settle the question of Ms. intent, they do not allow us significant discretion. It is difficult to conclude, based on these facts, that Ms. did not intend a serious attack on her husband. The presence of the weapon is attributed to her, and she made use of it. Since this case comes to us as a civil matter, we do not address the question of the level of the offense under the applicable criminal statutes. It is clear, however, that we are without a sufficient basis to conclude the question of benefits in her favor.

The Claims Group's determination is therefore affirmed.

Sincerely yours,


James F. Hinchman
General Counsel

cc: