

Date: June 3, 2004  
Claimant: [name]  
File Number: 04-0021  
OPM Contact: Deborah Y. McKissick

The U.S. Department of Homeland Security, Customs and Border Protection requested that the Office of Personnel Management (OPM) provide guidance on distributing the unpaid compensation of [decedent]. The agency wants to know whether the decedent's unpaid compensation may be distributed to his surviving daughter since the designated beneficiary can not be located. OPM received the claim on March 24, 2004.

On May 6, 1994, the decedent signed the Unpaid Compensation of Deceased Civilian Employee form (SF-1152), designating his then-wife, [name] as sole beneficiary of his unpaid compensation.

The agency reports that the decedent died on April 13, 1999. Two former spouses and a daughter survive the decedent. The Executor of the decedent's estates submitted a certified copy of a Preliminary Letters of Testamentary, dated May 17, 1999 confirming his appointment. The Executor has provided documents that he has been unable to locate the designated beneficiary.

The agency believes "the designated beneficiary's right to file her claim within the 6-year limitation, which will expire in April 2005. As an alternative, with OPM approval, we [the agency] would propose that the Executor's statements suffice to allow immediate payment of the moneys to the surviving daughter."

Disposition of unpaid compensation payable under Federal law is governed exclusively by Federal statute and regulation, and not by laws and courts of the state of domicile or other jurisdiction. *Raymond H. Hanrahan (Deceased)*, B-262112( March 6, 1996); *Cornell D. Cooper (Deceased) and Dorothy P. Fouts (Deceased)*, B-254921 (March 11, 1994); *Richard A. Davenport (Deceased)*, B-227728 (March 23, 1988). Section 5582 of title 5, United States Code (U.S.C.), and OPM regulations thereunder, at 5 CFR Part 178, govern settlement of the accounts of deceased employees of the Federal Government. They specify requirements for designating beneficiaries and a statutory order of precedence for disposition of a deceased employee's unpaid compensation. Section 5582, provides in part:

- (a) The employing agency shall notify each employee of his right to designate a beneficiary or beneficiaries to receive money due, and of the disposition of money due if a beneficiary is not designated. An employee may change or revoke a designation at any time under regulations promulgated ...by the Director of the Office of Personnel Management or his designee....

(b) In order to facilitate the settlement of the accounts of deceased employees, money due an employee at the time of his death shall be paid to the person or persons surviving at the date of death, in the following order of precedence, and the payment bars recovery by another person of amounts so paid:

First to the beneficiary or beneficiaries designated by the employee in a writing received in the employing agency before his death.

5 U.S.C. § 5582 identifies the following individuals in order of precedence: the employee's widow or widower, child or children and descendants of deceased children by representation, parts or the survivor of them, the duly appointed legal representative of the employee's estate, and finally, the person or persons entitled under the laws of the employee's domicile at the time of his death.

OPM regulations, at 5 CFR 178.203(a) and 178.204, track 5 U.S.C. § 5582. Moreover, 5 CFR 178.203(d) states the requirements for executing and filing a designation of beneficiary form, specifying that:

The Standard Form 1152 must be executed in duplicate by the employee and filed with the employing agency where the proper proper officer will sign it and insert the date of receipt in the space provided on each part, file the original, and return the duplicate to the employee.

Interpretation of a statute begins with "the language of the statute itself" and, "[a]bsent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive." *Kaiser Aluminum & Chemical Corp. v. Bonjorno*, 494 U.S. 827, 835, 110 S. Ct. 1570, 1575 (1990), citing *Consumer Product Safety Commission v. GTE Sylvania, Inc.*, 447 U.S. 102, 108, 100 S. Ct. 2051, 2056 (1980). It is clear from the language in 5 U.S. C. § 5582(b) that Congress intended to establish a simple and straightforward method of distributing a deceased employee's unpaid compensation. According to the statute, and OPM corresponding regulations, employees must designate their beneficiaries in writing received in the employing agency before the employee's death. Thus, the statute authorizes employees to designate beneficiaries for their unpaid compensation, does not provide for an individual other than the employee to designate his or her beneficiaries, and provides for distribution according to a specified order of precedence in the absence of such a designation.

The language of section 5582 shows that, in establishing this order of precedence, Congress intended to "facilitate the settlement of the accounts of deceased employees" and to favor, for the distribution of compensation and allowances due, the beneficiaries that employees have designated to receive their unpaid compensation. Indeed, section 5582 provides for payment to individuals in successive categories of precedence only when nobody qualifies for placement in any of the preceding categories. The corresponding OPM regulations, 5 CFR 178.204, track the statute.

In accordance with the Barring Act, 31 U.S.C. § 3702(b)(1), every claim against the United States is barred unless such claim is received within six years after the date such claim first

accrued. *Matter of Robert O. Schultz*, B-261461 (November 27, 1995). The Barring Act does not merely establish administrative guidelines; it specifically prescribes the time within which a claim must be received in order for it to be considered on its merits. *Matter of Nguyen Thi Hao*, B-253096, (August 11, 1995). OPM does not have any authority to disregard the provisions of the Barring Act, make exceptions to its provisions, or waive the time limitation that it imposes. See *Matter of Nguyen Thi Hao, supra*; *Matter of Jackie A. Murphy*, B-251301 (April 23, 1993); *Matter of Alfred L. Lillie*, B-209955, May 31, 1983. The designated beneficiary's claim for the unpaid compensation will be barred in April 2005.

OPM does not conduct adversary hearings, but settles claims on the basis of the evidence submitted by the claimant and the written record submitted by the government agency involved in the claim. 5 CFR 178.105; *Matter of John B. Tucker*, B-215346, March 29, 1985. The decedent properly designed a beneficiary and signed the SF-1152, and there is no evidence presented that the designated beneficiary is deceased. Accordingly, the decedent's unpaid compensation should be paid to the beneficiary. However, if there is proof [death certificate] that the designated beneficiary is deceased, the unpaid compensation should be paid to the daughter.

This settlement is final. No further administrative review is available within the Office of Personnel Management. Nothing in this settlement limits the claimant's right to bring an action in an appropriate United States Court.