

**Disputed Claim for Unpaid Compensation Decision  
Under section 3702 of title 31, United States Code**

**Decedent:** [name]

**Organization:** Social Security Administration  
Baltimore, Maryland

**Claim:** Disputed Claim for Compensation Due  
A Deceased Employee

**Agency decision:** N/A

**OPM decision:** Denied

**OPM file number:** 07-0032

/s/ for

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Robert D. Hendler  
Classification and Pay Claims  
Program Manager  
Center for Merit System Accountability

7/10/2007

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Date

This action is in response to a disputed claim for unpaid compensation due a deceased employee, [name], for a determination of which claimants are properly entitled to payment. The request was forwarded to the U.S. Office of Personnel Management (OPM) by the Social Security Administration (SSA), the Federal agency which had employed the decedent. In its June 12, 2006, letter SSA enclosed copies of the following documents:

Standard Form (SF) 1153, Claim for Compensation of Deceased Employee, signed and dated by [name] identifying herself a daughter of the decedent, and signed and dated by two witnesses.

State of Maryland Certificate of Death of the employee, with date of death October 13, 2003, showing her as married.

Baltimore City Health Department Certificate of Live Birth of August 17, 1967, for [daughter's name] with [claimant] ([name] listed as father's name on October 13, 2003, Certificate of Death) as mother and [name] as father.

State of Maryland Letters of Administration of the Estate of [claimant] to [claimant's daughter] as personal representative for intestate estate effective October 31, 2003.

State of Maryland, Baltimore City, sct., Application for Marriage License and Clerk's Certificate of Marriage Return, showing bride's name as [claimant] (Div. Balto. MD. 12/10/71), groom's name as [name] (Div. Buffalo, N.Y. 1/31/79) showing their marriage on February 6, 1981, and filed on February 18, 1981.

One page of an undated Summons, Action for Divorce, State of New York, Supreme Court, County of Erie, [name similar to claimant's name] vs. [claimant's husband] (with an address of P.O. Box 1000, Lewisburg, Pennsylvania).

June 7, 2004, letter from the Chief, FOIA/PA Section, Federal Bureau of Prisons (BOP), U.S. Department of Justice, to Lisa Smith responding to a March 16, 2004, Freedom of Information Act request for "information pertaining to [claimant's husband], and a forwarding address upon the release of his incarceration..." BOP refused to release [claimant's husband's] address due to Privacy Act restrictions, but provided 27 pages of public information.

SSA believes the case may require a determination by OPM as to:

...whether the deceased employee's daughter, [name] who is now an adult, or an absent spouse, [name] whose whereabouts are unknown, may be entitled to payment. Since the employee had no Standard Form 1152, Designation of Beneficiary for her Unpaid Compensation in her official personnel folder, 5 CFR Section 178.204, Order of Precedence would rule the distribution of money. Under that section, it appears that without evidence of death or divorce, [claimant's husband] would be entitled to payment. However, the daughter claims that [claimant's husband] was absent for more than 20 years. [Claimant's daughter] stated that during much of this time, [claimant's husband] was incarcerated. She also stated that as far as she knows her mother and [claimant's husband] could have been divorced, or he could be deceased as they have not

heard from him for many years. [Claimant's daughter] has attempted to locate [claimant's husband] without success. [Claimant's daughter] is requesting payment as daughter, executor of her mother's estate, and the responsible party for funeral expenses.

We apply the same procedures as our predecessor agency in the settlement of disputed claims. As stated in 4 CFR § 33.10 Applicability of general procedures:

When not in conflict with this part, the provisions of part 31 of this subchapter relating to procedures applicable to claims generally, are also applicable to the settlement of accounts of deceased civilian officers and employees.

Consistent with 4 CFR § 33.10, 5 CFR § 107.105 places the burden of proof on the claimant to establish their right to payment, and our decision is based on the written submissions of the parties. In the instant case, we will assume the moving party, the decedent's daughter, submitted all enclosures other than the SF-1153. The enclosure include what appears to be a handwritten listing of pertinent information on [claimant's husband's] incarceration, including "Before 1981 Lewisburg, PA Federal Pen." and "Released December 16, 2002." Page 23 of the public information referred to previously shows:

DATE SENTENCED/PROBATION IMPOSED: 10-13-1977  
 DATE WARRANT EXECUTED:.....: 03-22-1982  
 DATE COMMITTED.....: 05-21-1982  
 HOW COMMITTED.....: RETURN OF PAROLE  
 VIOLATOR

Assuming this is the [name] listed as marrying the decedent on February 6, 1981, we infer the marriage took place while [claimant's husband] was on parole. Although the marriage certificate lists [claimant's husband] as divorced on January 31, 1979, in Buffalo, New York, the previously cited summons does not establish when or if the divorce by [name similar to claimant's name] from [claimant's husband] took place. Therefore, the record is not clear as to whether the decedent was ever legally married to [name]. The summons lists the name and telephone number of [name similar to claimant's name] attorney, but the decedent's daughter has not submitted documentation showing what efforts, if any, she has taken to ascertain whether [claimant's husband] is the decedent's legal widower. As noted by SSA, since no written designation of beneficiary or beneficiaries was made by the decedent, the order of payment precedence in 5 U.S.C. 5582(b) mandates payment, in this case, "to the... widower."

As discussed in the Principles of Federal Appropriations Law, Second Edition, Volume III, November 1994 (GAO/OGC-94-33) in settling claim:

The guiding principle is the rather common-sense proposition that payment should be made to the person or entity entitled to receive it. Common sense in this instance is reinforced by 31 U.S.C. § 3322(a), which instructs disbursing officers to draw public money from the Treasury only "payable to persons to whom payment is to be made"...The government's motives are not purely benevolent. To quote a phrase used in innumerable GAO decisions, the government's objective in making payment is to secure a "good acquittance" or a "valid acquittance" for the United States. 62Comp. Gen. 302, 307 (1983); 24

Comp. Gen. 261, 262 (1944). This means the assurance that the payment is discharging the government's obligation and that the government will not find itself embroiled in controversy between competing claimants with the resulting possibility of being required to pay twice.

The written record, therefore, is insufficient for OPM to issue a settlement on this claim at the present time. See B-131346, November 7, 1957 and B-207143, December 26, 1984. Because the employing agency has the initial responsibility for distributing their deceased employees' unpaid compensation and for requesting individuals in their order of precedence to execute an SF-1153 (5 CFR §§ 178.204 and 178.205), SSA should contact BOP to accomplish this responsibility. Should BOP decline to provide [claimant's husband's] home address to SSA, BOP should be asked to forward SSA's request to [claimant's husband]. SSA should inform OPM of the results of this effort. OPM will be pleased to further consider this claim upon receipt of evidence sufficient to ensure the objective to secure a good acquittance for the United States if, after SSA further develops the record as discussed previously, it is unable to settle the claim.

This settlement is final. No further administrative review is available within OPM. Nothing in this settlement limits the parties' right to bring an action in an appropriate United States Court.