

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

**Decedent:** [name]

**Organization:** Social Security Administration  
[city & State]

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

**Agency decision:** N/A

**OPM decision:** Denied

**OPM file number:** 08-0117

//Judith A. Davis for

---

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

3/24/2009

---

Date

This action involves a disputed claim for unpaid compensation due a deceased employee, [name]. In its August 18, 2008, letter, the Office of General Counsel (OGC) for the Social Security Administration (SSA), the Federal agency which employed the decedent, asks for the U.S. Office of Personnel Management's (OPM) advice in determining which of two putative claimants is properly entitled to payment. In this letter, SSA enclosed copies of pertinent documents including:

Standard Form (SF) 1153, Claim for Compensation of Deceased Employee, signed and dated by [sister's name] identifying herself as sister of the decedent and as "next of kin in lieu of administration" and signed and dated by two witnesses.

State of New Jersey Certificate of Death of the employee with date of death listed as March 7, 2008, showing him as never married.

Affidavit of Next of Kin in Lieu of Administration Where Real and Personal Estate Does Not Exceed \$10,000.00-N.J.S.A. 3B: 10-4, signed by [sister's name], filed on March 14, 2008.

Surrogate's Court of Hudson County (New Jersey) certifying [sister's name] as duly appointed to administer the decedent's "goods, chattels, right and credited," on May 8, 2008.

September 5, 2005, letter from decedent to [sister's name] stating "that my dear sister, [sister's name], is to be the sole executor of my estate and the sole beneficiary."

March 18, 2008, letter sent to SSA by Robert T. Brescia, Attorney at Law, claiming to represent the estate of the decedent, advising: "The Estate reserves the right to contest the designation of beneficiary on the basis of fraud, duress, undue influence and competence of [decedent]."

August 1, 2008, letter to SSA from [sister's name] identifying her as "administrator of the Estate of [decedent]" and stating the reasons for contesting the designation of [name] as beneficiary of [decedent's] unpaid compensation.

July 18, 2008, letter from Richard A. Go, M.D., stating the decedent was admitted to Jersey Medical Center on March 6, 2008 and "was given morphine to help alleviate the constant pain caused by his terminal medical illness" and "agreed to hospice care..."

SSA states:

This office seeks your assistance in determining how the Agency should proceed with the unpaid death benefits of [decedent]...[decedent's] unpaid death benefits consist of his unpaid compensation as well as the proceeds of his Thrift Savings Plan, and are the subject of disputed claims between [decedent's sister] and [name] ([decedent's] friend). [Decedent's sister] claims she is entitled to the unpaid death benefits since [decedent] designated her as his sole beneficiary in September 2005; she is the only next of kin who has not renounced all claims to his estate; and, he has left no surviving spouse. [Decedent's friend] claims that he is entitled to the unpaid benefits since [decedent] designated him as the sole

beneficiary of the estate the day before [decedent] died. The unpaid death benefits are currently being withheld by the Department of the Interior.

SSA states an SSA Human Resources Specialist (HRS) received two Designation of Beneficiary forms (Unpaid Compensation of Deceased Civilian Employee, SF-1152 and Designation of Beneficiary-CSRS, SF-2808) dated March 6, 2008, from the decedent who died from cancer on March 7, 2008. The agency indicates that at the time of his death, the decedent listed his home address as [address], and states: "Significantly, [decedent] listed [decedent's friend's] residence address also as [same address] but did not indicate [decedent's friend's] apartment number."

The agency advises [decedent's sister] contacted the previously identified SSA HRS on March 10, 2008, at which time [decedent's sister] "expressed her desire to file a claim for [decedent's] unpaid death benefits." The SSA HRS advised [decedent's sister] "she was not listed as a beneficiary in the SSA's files." SSA also references Mr. Brescia's March 18, 2008, letter in which he asserts that [decedent's] estate:

...had elected to contest the payment of [decedent's] unpaid compensation and the proceeds of his Thrift Savings Plan [TSP] to anyone other than [decedent's] estate....The estate further reserved the right to contest any designation of beneficiary (to anyone other than [decedent's sister]) on the basis of fraud, duress, undue influence, and competence of [decedent]. What's more, the estate would submit an application for the proceeds of the Thrift Savings Plan as well as any other of [decedent's] death benefits.

SSA lists the following issues in its August 18, 2008, letter to OPM: (1) Is the Affidavit of Next of Kin in Lieu of Administration valid? and (2) Who is the beneficiary of [decedent's] Thrift Savings Plan? SSA questions whether the sum of the proceeds from the decedent's TSP and \$317 checking account exceed the \$10,000 Affidavit of Next of Kin in Lieu of Administration limit. SSA also questions whether [decedent's friend] was the decedent's domestic partner under New Jersey law (See N.J. Domestic Partnership Act, Chapter 246, P.L. 2003), a status which would appear to render the Affidavit invalid. Citing 5 CFR 178.204(a), the agency also states [decedent's friend] "may be entitled to [decedent's] unpaid compensation" since the decedent "properly sent SF-1152 to his Human Resources office which received the form prior to his death." Further, SSA states: "However, since there is no TSP 3, Designation of Beneficiary, Federal Thrift Savings Plan on file it is unclear who is entitled to the proceeds from [the decedent's] Thrift Savings Plan."

The procedures generally applicable to compensation claims also apply to the settlement of accounts of deceased civilian officers and employees. 5 CFR 178.208. Under 5 CFR § 178.105 the burden of proof is on the claimant to establish the right to payment, and OPM's decision is based on the written submissions of the parties.

A review of guidance issued by the former General Accounting Office (GAO), the agency formerly charged with settling compensation claims and the accounts of deceased employees, is instructive in this matter. As discussed in the Principles of Federal Appropriations Law, Second Edition, Volume III, November 1994 (GAO/OGC-94-33):

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. 62 Comp. 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.

While the claimant asks that the decedent’s unpaid compensation be awarded to the family based on fairness, including the need to pay the Estate’s debts, the disposition of unpaid compensation due a Federal employee is governed exclusively by Federal law. The disposition of unpaid compensation due a Federal civilian employee is controlled by the provisions of 5 U.S.C. §§ 5581-5583. Under 5 U.S.C. § 5583, money due a deceased employee at the time of death must be paid to the beneficiary designated in accordance with 5 U.S.C. § 5582(b), or, if none, to the widow or widower of the employee. In relevant part, 5 U.S.C. § 5582(b) describes the order of precedence as follows:

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

Second, if there s no designated beneficiary, to the widow or widower of the employee.

\*\*\*\*\*

Fifth, if none of the above, to the duly appointed legal representative of the estate of the employee.

Sixth, if none of the above, to the person or persons entitled under the laws of the domicile of the employee at the time of his death

The record shows an SF-1152, Designation of Beneficiary, executed by the decedent, naming [decedent’s friend] as the sole beneficiary, dated one day prior to the decedent’s death on March 7, 2008. The claimant, however, through her attorney, indicated the Estate reserved the right to contest this designation “on the basis of fraud, duress, undue influence and competence” of the decedent. See March 18, 2008, letter from Robert T. Brescia to SSA. In her August 1, 2008, letter to SSA, the claimant asserts an SSA employee assisted [decedent’s friend] in having the decedent sign papers while the decedent:

...was heavily sedated for pain, so that [name] could obtain his benefits. They waited to contact his family to afford them the time they needed to submit the necessary applications to Federal Plaza to make their claim. They even attempted to claim life insurance benefits which [decedent] did not even have.

The claimant asserts that when the decedent “was in the hospital and/or hospice, under heavy medication for pain,” these same individuals gained access to the decedent’s apartment. *Id.* The claimant alleges that during this visit “his last will & testament was stolen from his files (leaving an empty, labeled file folder), and some other papers, one of which explained to the police that

[decedent's friend] was, on occasion, beating [decedent] up” because [decedent's friend] “was insanely jealous.” The claimant states: “[Name] also attempted to claim that he lived at the same address, but this was quickly discredited by the owner of the apartment building. While criminal action cannot be proven and no police report has been filed, I hope you can see the crimes attempted by his so-called friends.” *Id.* In a January 9, 2009, email to OPM on this matter, the claimant asserts: “[A]s far as clarity of mind is concerned, [decedent] was injected with morphine in preparation for death. this [sic] was coursing through his veins as well as the litany of drugs that had been prescribed for his condition.”

The claimant has submitted no documentation to support these assertions. The July 18, 2008, written statement by Dr. Go, who appears to have been the decedent’s treating physician, fails to provide insight regarding the decedent’s clarity of mind at the time he executed the SF-1152 the day prior to his death on March 7, 2008. Although these allegations concern the actions of at least one of its employees, SSA’s request is silent with regard to whether the agency has taken action to investigate them. In addition, the file does not contain an SF-1153 from [decedent's friend] seeking the decedent’s unpaid compensation.

The written record in this disputed claim is insufficient for OPM to issue a settlement decision at the present time. *See, e.g.,* B-131346, November 7, 1957; B-207143, December 26, 1984; B-228750, October 7, 1988; and OPM file number 07-0032, July 10, 2007. SSA, as the employing agency, has the initial responsibility for distributing its deceased employees’ unpaid compensation and for requesting individuals to execute an SF-1153 in the order of precedence (5 CFR §§ 178.204 and 178.205). Before SSA can distribute the decedent’s unpaid compensation, the agency is required to take appropriate action to establish the validity of the SF-1152 executed by the decedent as part of the process of determining which individual is the appropriate beneficiary. Given the seriousness of the allegations concerning the validity of the SF-1152, resolution of this matter appears to require further investigation, whether it is conducted through SSA’s administrative adjudication, judicial review, or some other appropriate means. SSA should inform OPM of the course of action it decides to pursue, and the results of this effort.

With regard to the matter of domestic partnership raised by SSA, we note that 1 U.S.C. § 7 precludes treatment of [decedent's friend] as the decedent’s “widow or widower.” Furthermore, we find nothing in record which would, for purposes of 5 U.S.C. § 5582, establish [decedent's friend] as the beneficiary “under the laws of the domicile of the employee at the time of his death.”

With regard to claims for money under the TSP, we note the jurisdiction for such matters rests with the Federal Retirement Thrift Investment Board. *See* 5 U.S.C. § 8472. Although we have no jurisdiction over this matter, we note the TSP 3 must be filed with the TSP record-keeper and not with SSA.

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.