

**U.S. Office of Personnel Management  
Disputed Claim for Unpaid Compensation Decision  
Under section 3702 of title 31, United States Code**

**Decedent:** [name]

**Organization:** Federal Emergency Management Agency  
U.S. Department of Homeland Security  
[city & State]

**Claim:** Disputed claim for unpaid compensation due  
a deceased employee

**Agency decision:** N/A

**OPM decision:** Decline to render a decision

**OPM file number:** 12-0010

//Judith A. Davis for

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Robert D. Hendler  
Classification and Pay Claims  
Program Manager  
Merit System Audit and Compliance

2/13/2013

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Date

This action involves a disputed claim for unpaid compensation due a deceased employee, [name]. In its February 6, 2012, letter to the U.S. Office of Personnel Management (OPM), the Office of the Chief Component Human Capital Officer for the Federal Emergency Management Agency (FEMA), the Federal agency which employed the decedent, asks for OPM's assistance in making a determination as to the appropriate disposition of the decedent's unpaid compensation. In this letter, FEMA enclosed copies of pertinent documents including:

Standard Form (SF) 1152, Designation of Beneficiary, Unpaid Compensation of Deceased Civilian Employee, signed and dated June 10, 2008, by the decedent naming his "friend," [friend's name], as sole beneficiary.

Commonwealth of Virginia Certificate of Death of the employee with date of death listed as October 15, 2011, as the result of a self-inflicted gunshot wound, time of injury unknown, identifying him as the "widowed" and the name of his deceased spouse as "[wife's name]."

Commonwealth of Virginia Certificate of Death for "[wife's name]" with date of death listed as October 15, 2011, as the result of a being "shot by assailant," time of injury unknown, identifying her as "married" and the name of her spouse as "[deceased employee's name]."

In response to our request for additional information, FEMA forwarded copies of other pertinent documents via email on February 9, 2012, including:

SF-1153, Claim for Compensation of Deceased Employee, signed and dated November 28, 2011, by [first son's name] identifying himself as son of the decedent and signed and dated the same date by two witnesses, listing [second son's name] as another son of the decedent.

SF-1153, Claim for Compensation of Deceased Employee, signed and dated November 15, 2011, by [second son's name] identifying himself as son of the decedent and signed and dated the same date by two witnesses, listing [first son's name] as another son of the decedent.

SF-1153, Claim for Compensation of Deceased Employee, signed and dated November 15, 2011, by [stepson's name] identifying himself as stepson of the decedent and signed and dated the same date by two witnesses, listing [first & second sons' names] as adopted sons of the decedent from a previous marriage.

FEMA states the decedent's SF-1152 "lists his spouse, [wife's name]," as his beneficiary. FEMA further states it received notification of the decedent's death on October 15, 2011:

[Wife's] son, [stepson's name] contacted the agency, as executor of both [deceased employee's and wife's] estates, to inquire as to the payment of the different benefits. It was his belief that [wife's] estate should receive the funds, as [deceased employee] was the cause of her death and [deceased employee's] will awarded only a small amount to his adopted son's [sic] [sons' names].

Claim forms were submitted by [stepson & sons]. Death certificates were also received on both [deceased employee & wife]. Neither death certificate indicates a time of death; however, [deceased employee's] death certificate indicates he was widowed at the time of his death. At this time there has [sic] been no claims denial as doubt exists as to the person's [sic] properly entitled to payment.

In its recommendation for disposition of the claim, FEMA states:

Based on the Standard Order of Precedence, the funds should be distributed in equal shares to the surviving adopted children of [deceased employee], [sons].

[Wife's] son, [stepson's name], appears to have no entitlement to payment, as his father/step-son relationship ended when [deceased employee's] marriage to [wife's name] was terminated.

The procedures generally applicable to compensation claims also apply to the settlement of accounts of deceased civilian officers and employees. See title 5, Code of Regulations (CFR), section 178.208. Under section 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. [United States Code] § 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 claimant [stepson's name] asks that the decedent's unpaid compensation be awarded based on equity as discussed previously in this decision, 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 accordance with 5 U.S.C. § 5582(b) in 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 is no designated beneficiary, to the widow or widower of the employee.

Third, if none of the above, to the child or children of the employee and descendants of deceased children by representation.

Fourth, if none of the above, to the parents of the employee or the survivor of them.

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

If a person entitled to payment under 5 U.S.C. § 5582(b) survives the deceased employee, the right to payment vests in that person and if that person should thereafter die before payment is accomplished, the right passes to the survivor's estate. It does not pass to the next person on the order of precedence. B-162287 (Aug. 25, 1967) and B-189525 (Oct. 18, 1977). As such, if the deceased employee predeceased his wife, then her estate would be entitled to the deceased employee's unpaid compensation. However, if the wife predeceased the deceased employee, then the deceased employee's unpaid compensation would bypass the wife (the designated beneficiary) and would be due to the next person(s) in the order of precedence living at the time of the deceased employee's death.

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. FEMA, as the employing agency, has the initial responsibility for establishing the facts necessary for OPM to exercise its responsibility under 5 CFR 178.207(b) to settle disputed claims for the compensation due a deceased employee.

In cases of conflicting claims, GAO "generally require[d] either evidence sufficient to allow one claim and deny all others or a judicial determination by a court of competent jurisdiction establishing entitlement." B-228750 (Oct. 7, 1988). See also, B-209076 (Aug. 25, 1983). OPM also follows this standard for adjudicating conflicting claims. Rather than resolve the present case solely on the written record, where it is unclear whether, under Virginia state law, which spouse died first, and how the employee's unpaid compensation should be distributed among the claimants, we believe that it would be better for a court of competent jurisdiction to resolve the proper disposition of the employee's unpaid compensation, especially in view of the unique factual contentions.

Accordingly, FEMA should await receipt of an appropriate court order as to the disposition of the unpaid compensation of [deceased employee].

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.