



Digest
934
DIGEST - NO CIRCULATION - Mil.

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-186725

OCT 27 1976

The Honorable John E. Moss
House of Representatives

Dear Mr. Moss:

Further reference is made to your letter dated June 11, 1976, with enclosures, requesting that this Office review the matter of the claim of your constituents, Mr. and Mrs. Raymond Connors, 1633 - 40th Street, Sacramento, California 95819, for certain monies left on deposit by Mr. Marilyn E. Radum with the Veterans Administration Hospital, Brooklyn, New York, at the time of his death, which claim has been the subject of a disallowance by the Veterans Administration (VA).

The file shows that Mr. Radum and Mr. and Mrs. Connors were personal friends and that Mr. Radum lived in the Connors' residence in the New York City area prior to the time Mr. and Mrs. Connors moved to California in 1974. It appears that while Mr. Radum resided with the Connors he was suffering from a terminal illness and received nursing care as well as food and shelter from them. Mr. Radum entered the Veterans Administration Hospital, Brooklyn, New York, on December 11, 1974, at which time he executed Veterans Administration Form 10-10, "Application For Medical Benefits," copy enclosed. Item number 10 of the form contains the following language:

"I designate the following person or persons, in the order listed, to receive possession of all my personal property left on the premises under the control of the VA after leaving such place or at the time of my death. (This designation does not constitute a will or transfer of title.)"

Mr. Radum designated a Mrs. Mahfous to receive possession of such property.

The form also contains this notation immediately above the signature block:

"NOTE - The law (38 U.S.C. 5220 et seq.) provides that upon the death of any veteran receiving care or treatment by the Veterans Administration in any institution leaving no widow (widower), next of kin or heir entitled to inherit, all

B-186725

personal property, including money or balances in bank, and all claims and choses in action, owned by such veteran and not disposed of by will or otherwise, will become the property of the United States as trustee for the Post Fund."

On February 4, 1975, Mr. Radum executed VA Form 10-10r, "Application For Readmission To Hospital Or Domiciliary," copy enclosed, which provided the same notice of the law as was contained in the VA Form 10-10 that he signed in December 1974. On May 28, 1975, Mr. Radum executed a VA form 10-2332, copy enclosed, changing the designation of persons to receive his personal property left on the hospital premises under the control of the Veterans Administration from Mrs. Mahfous to Mr. Connors with Mrs. Connors listed as second designee.

Mr. Radum died on August 28, 1975, without leaving any known family relatives. Thereafter, Mr. and Mrs. Connors claimed entitlement to the \$1,015.54 in Mr. Radum's hospital account as his designated beneficiaries. However, the VA declined to deliver the money on the basis of VA Regulations 4804(A)(5), 38 C.F.R. 12.4(a)(5), which prevents delivery of a veteran's personal property to a designee if "it is probable that title would pass to the United States" in accordance with 38 U.S.C. 5220(a) and the regulations promulgated thereunder.

You have questioned the legality of the VA's decision to withhold the money from Mr. and Mrs. Connors.

The substantive provisions of law governing disposition of deceased veteran's personal property are contained in 38 U.S.C. 5201-5228. Section 5202 of that title provides in pertinent part:

"(b) If any veteran (admitted as a veteran), upon his last admission to, or during his last period of maintenance in, a Veterans' Administration facility, shall have designated in writing a person (natural or corporate) to whom he desires his personal property situated upon such facility to be delivered, upon the death of such veteran the Administrator or employee of the Veterans' Administration authorized by him to so act, may transfer possession of such personal property to the person so designated. * * *"

That subsection further gives the VA Administrator the discretion to decline to transfer possession of the property to such designate and 38 U.S.C. 5210 provides that the decision of the Administrator shall not be reviewable administratively by any other officer of the United States.

B-186725

Section 5220 of the same title provides in part that:

"(a) Whenever any veteran (admitted as a veteran) shall die while a member or patient in any facility, or any hospital while being furnished care or treatment therein by the Veterans' Administration, and shall not leave surviving him any spouse, next of kin, or heirs entitled, under the laws of his domicile, to his personal property as to which he dies intestate, all such property, including money and choses in action, owned by him at the time of his death and not disposed of by will or otherwise, shall immediately vest in and become the property of the United States as trustee for the sole use and benefit of the General Post Fund. * * *"

Under the statutory scheme thus established, a veteran receiving care in a VA hospital may designate the persons whom he wishes to take possession of his personal property upon his death, but the VA is not bound to deliver possession in accordance with such designation and is not subject to have its actions reviewed administratively. In addition, ownership of the personal property of such veteran vests in the United States if he is not survived by any "spouse, next of kin, or heirs entitled under the laws of his domicile to his personal property as to which he dies intestate" and the personal property is "not disposed of by will or otherwise."

In your letter you have questioned whether the word "otherwise" in the phrase "not disposed of by will or otherwise" contained in 38 U.S.C. 5220(a) might refer to the VA Forms executed by Mr. Radum in which he designated Mr. and Mrs. Connors to receive possession of his personal property left on the hospital premises at the time of his death.

The United States Supreme Court in the case of United States v. Oregon, 366 U.S. 643 (1961), has stated that the provisions of 38 U.S.C. 5220 are "clear and unequivocal on their face" and provide that when a veteran dies "without a will or legal heirs in a veterans' hospital," his personal property shall immediately vest in and become the property of the United States as trustee for the sole use and benefit of the General Post Fund. The Court further stated the Congressional plan was "that whatever little personal property veterans without wills or kin happen to leave when they die in veterans' homes and hospitals should be paid into the General Post Fund, to be used for the recreation and pleasure of other ex-service men and women who have to spend their days in veterans' homes and hospitals." The Court indicated that this involved only that property which for lack of testamentary disposition

B-186725

and heirs at law (intestacy) would be liable to escheat to the State. In this connection, see National Home, D.V.S. v. Wood, 299 U.S. 211 (1936), concerning similar prior legislation.

Thus, it would appear that the word "otherwise" in the phrase "by will or otherwise" contained in 38 U.S.C. 5220(a) means dispositions of property other than by will which may be authorized under the laws of the veteran's State of domicile. In this connection, we note the Supreme Court has also stated that the Tenth Amendment to the Constitution reserves to the States the power to determine the manner of disposition of a deceased domiciliary's property and the power to determine who may be made beneficiaries. See United States v. Burnison, 399 U.S. 87 (1950); United States v. Fox, 94 U.S. 315 (1876).

The issue then is whether VA Forms 10-10, 10-10r, and 10-2332 executed by Mr. Radum constitute valid testamentary instruments under the laws of New York or such other State as may have been his domicile at the time of his death. This Office is without authority to make such a determination. Rather, it is within the province of the appropriate State authorities to make such determination. In this regard, it is to be observed that the statute governing the filing of claims by prospective beneficiaries with the VA is governed by 38 U.S.C. 5226, which provides in part:

"* * * Upon receipt of due proof that any person was at the date of death of the veteran entitled to his personal property, or a part thereof, under the laws of the State of domicile of the decedent, the Administrator may pay out of the Fund, but not to exceed the net amount credited thereto from said decedent's estate less any necessary expenses, the amount to which such person, or persons, was or were so entitled, and upon similar claim any assets of the decedent which shall not have been disposed of shall be delivered in kind to the parties legally entitled thereto. * * *"

Since Federal law provides that a claimant upon "due proof" of entitlement to the veteran's personal property "under the laws of the State of domicile of the decedent" may receive such property, it appears that Mr. and Mrs. Connors' recourse is now to submit the matter to the courts of Mr. Radum's State of domicile, which was apparently New York.

In your letter you also question whether Mr. Radum was given reasonable notice of the relevant statutes in this case, as is required

NOTRE-DAME DE LA Vierge
admission de la Vierge
admission de la Vierge

938

B-186725

SECRET
SECRET

SECRET
SECRET

by 38 U.S.C. 5203 and 38 U.S.C. 5227. The VA Forms 10-10 and 10-10r executed by Mr. Radum relate to the provisions of 38 U.S.C. 5220(a). In addition, the Code of Federal Regulations (38 C.F.R. 12.13 and 12.20) require that the provisions of law governing these matters be posted in a prominent place. We presume these regulations were followed at the VA Hospital, Brooklyn, New York, when Mr. Radum was a patient there. Whether he actually read and understood these notices is now a matter of conjecture, but it does appear the notice provisions of the statutes were followed.

We trust this information will be of assistance to you and regret that it is not more favorable to your constituents.

The file submitted with your letter is returned as requested.

Sincerely yours,

R. T. KERR
Comptroller General
of the United States

Enclosures - 4

SECRET
SECRET
SECRET

SECRET
SECRET
SECRET

SECRET
SECRET
SECRET