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DECISION



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

FILE: B-162806

DATE: NOV 18 1977

MATTER OF: Mrs. Ruth T. Burke

DIGEST: Where an enlisted member registered a class Q allotment in favor of his legal wife, but directed that the checks be sent to the address of someone else who forged the legal wife's signature on them and cashed them, no valid allotment was in effect; and, therefore, the legal wife has no entitlement to the proceeds of the checks.

This action is in response to a letter from Mrs. Ruth T. Burke to the President of the United States which was forwarded to this Office since it constitutes a request for reconsideration of our decision B-162806, January 29, 1969, in which we held she was not entitled to the proceeds of 87 class Q allotment checks.

Our file on this case indicates that Thomas E. Burke, RA 6, 841, 953, then an enlisted member of the Army, requested a class Q allotment effective February 1, 1951, in the name of his dependent wife, Ruth T. Burke, who lived in Philadelphia, Pennsylvania. He, however, directed that the checks be mailed to 3506-1/2 Fourth Avenue, Columbus, Georgia, where Virginia Alice Burke to whom he was bigamously married, resided. Accordingly, 9 checks of \$147.50 each, were issued on his allotment account for the period of March 8, to October 31, 1951, and were mailed to that address.

Effective November 1, 1951, the allotment was decreased to \$127.50 because of the member's reduction in grade. Mrs. Ruth Burke's address on the pertinent document was shown as 2329 South Front Street, Philadelphia, the address of the member's mother, and, as a result, 4 checks, for the period December 4, 1951, to March 1, 1952, were drawn and mailed to that address. Three of the 4 were delivered to Mrs. Ruth Burke by the member's mother.

The check dated April 1, 1952, was drawn and mailed to 2908 Tilles Avenue, Fort Smith, Arkansas, apparently in accordance with a change of address requested in a letter dated July 16, 1952, written by Virginia Alice Burke but signed "Mrs. Ruth T. Burke".

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On the basis of a request by the member for a change of address, effective April 1, 1952, to 2100 North J Street, Fort Smith, Arkansas, the 16 checks issued from that date until the discontinuance of the allotment on July 31, 1953, because of the member's discharge on July 25, 1953, were drawn and mailed to that address. The 4 checks issued from May 1 to August 1, 1952, were for \$127.50 each, and the 12 checks issued from September 1, 1952, to August 1, 1953, were for \$127.10 each.

The member reallotted and registered a new class Q allotment of \$117.10 per month, effective November 1, 1953, which listed Virginia R. Burke, 2100 North J Street, Fort Smith, Arkansas, as his wife, and Thomas E. Burke of the same address, as his son. However, the first name and middle initial of the wife were crossed off the authorization document and changed to "Ruth T." On this allotment account, 11 checks for \$117.10 each, were issued from December 2, 1953, to October 1, 1954, and 19 checks in the amount of \$127.10 each, were issued from November 1, 1954, to May 1, 1955, the date the allotment was discontinued.

In a letter dated March 10, 1956, Mrs. Ruth Burke first inquired as to her entitlement to the allotment in question. In a letter dated June 15, 1956, she stated that she had not previously filed a claim for the allotment because of her mistaken belief that the member had divorced her and because of certain threats he had made. On March 22, 1957, she executed an affidavit that she had neither received nor negotiated 57 of the 60 checks at issue. On that date she also executed a release of claim regarding the 3 checks delivered to her by the member's mother, which she had endorsed and negotiated.

The member divorced Mrs. Ruth Burke on April 13, 1956. He was retired from the Army on January 31, 1957.

An investigation of the negotiation of the checks was conducted by the United States Secret Service. Its reports disclosed that the 37 checks not received by Mrs. Ruth Burke had been received, endorsed, and negotiated by Virginia Alice Burke.

By a letter dated November 5, 1958, to our Claims Division, the Treasurer of the United States, Check Claims Division, requested advice as to whether endorsers of the checks subsequent to Virginia Alice Burke should be held liable, and forwarded

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Mrs. Ruth Burke's claim for the amount represented by the 57 checks upon which her endorsement had been forged.

The Army Finance Center on the advice of its legal advisor that the rule of our decision B-116147, April 12, 1954, should be followed, apparently paid Mrs. Ruth Burke only \$33.86, which represented basic allowance for quarters for the period of March 29, 1954, the date of her first claim, to April 12, 1956, the date of the divorce.

Mrs. Ruth Burke continued to press her claim, and in 1957 the Army Finance Center requested that a decision be rendered by the Comptroller General as to whether Mrs. Ruth Burke should be paid. In so doing it was stated that it was the opinion of the Army Finance Center that the member did not in fact make an allotment in favor of Mrs. Ruth Burke and that no allotment was established for her under section 4 of the Dependents Assistance Act of 1950, 64 Stat. 794, 795, ch. 322, as amended, for the period in question. The letter further stated that, therefore, it had been determined that the member had been erroneously paid basic allowance for quarters in the amount of \$4,448.86, that \$3,126.49 of that amount had been recovered as of that time, and that collection of the remainder was being made at the rate of \$35.82 a month from the member's retired pay.

In our decision B-162606, supra, issued in response to the request from the Army Finance Center, we held, as previously noted, that Mrs. Ruth Burke was not entitled to the amount represented by the 57 checks upon which her signature had been forged.

Section 4 of the Dependents Assistance Act of 1950, supra, at 795, provides that to receive a basic allowance for quarters, an enlisted man with dependents must have in effect an allotment of his pay " * * * for the support of the dependent or dependents in whose account the allowance is claimed * * *" consisting of, at least, the sum of the basic allowance for quarters plus an additional specified amount.

We hold in Mrs. Ruth Burke's case, and similar cases, that no valid allotment under the Dependents Assistance Act was in effect where the service member directed that the allotment checks be mailed to an address where he intended them to be received by some

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person who was not a proper dependent of his under the act. That is, he made no valid allotment for the support of his dependents. See decisions B-136866, October 21, 1962, and B-13147, 1962.

While it is unfortunate that Mr. Burke did not have a valid allotment in effect for Mrs. Ruth Burke, as we stated in our decision of January 29, 1962, regarding this case:

"It is clear from the facts and circumstances in this case that the member had no intention to have Ruth T. Burke, his lawful wife, receive the monthly class Q allotment checks but rather he intended that Virginia Alice Burke would receive the checks. Therefore, it has been administratively determined on the basis of our decision of April 12, 1964, that Burke did not establish a valid allotment in favor of Ruth T. Burke and she is not entitled to the proceeds of the 57 checks which the Government was induced to issue pursuant to the member's fraudulent applications. * * *

In her letter requesting reconsideration, Mrs. Ruth Burke indicates that one of the main reasons she thinks she is entitled to the amount in question is that the member has repaid the money to the Government. The money he had to repay, however, was only the portion of the checks made up of the basic allowance for quarters which should not have been paid because, as previously noted, no valid allotment for the support of his dependents was in effect. The remaining portion of the checks were deductions from the member's pay, which he was not required to refund.

In summation, then, Mrs. Burke's entitlement to the amount represented by the 57 checks is solely dependent upon whether a valid allotment for her support was in effect for the period in question. Since it has been determined that a valid allotment was not in effect, the payment of the class Q allotment was not authorized and Mrs. Burke is not entitled to the amount at issue. Accordingly, Mrs. Ruth Burke's claim is again denied and our decision of January 29, 1962, is upheld.

R. P. VELLER

Deputy Comptroller General
of the United States