



Comptroller General
of the United States

Washington, D.C. 20548

151087

Decision

Matter of: Captain Marvin R. Marler, USNR (Deceased)

File: B-254996

Date: March 11, 1994

DIGEST

The widow of a member of the Naval Reserve who had qualified for reserve retired pay was convicted of manslaughter in his death. Her claim for a Survivor Benefit Plan annuity is denied because the record does not establish a lack of felonious intent on her part.

DECISION

This is in response to an appeal of a Claims Group settlement denying the claim of Mrs. Myra E. Marler, widow of Captain Marvin R. Marler, USNR, for a Survivor Benefit Plan (SBP) annuity. We affirm the Claims Group's determination.

Captain Marler's death certificate indicates that he died of a gunshot wound on October 15, 1988, and that Mrs. Marler, pursuant to a plea agreement, pleaded guilty to manslaughter with a firearm in his death. The record before us contains few other specific details surrounding Captain Marler's death and Mrs. Marler's involvement in it; there were some comments at the proceedings, however, concerning her mental capacity and medication she was taking. The Claims Group denied Mrs. Marler's claim for a Reserve-Component SBP annuity because the record does not establish a lack of felonious intent on her part.

Mrs. Marler argues that she pleaded guilty only to manslaughter, which she says is a negligent act and does not encompass felonious intent. Mrs. Marler further notes that there is no information available that shows felonious intent on her part, and that she therefore is entitled to the SBP annuity.

In cases of this nature, our Office repeatedly has held that it is against public policy to permit the payment by the government of benefits to a beneficiary who feloniously killed the individual upon whose death the payments became

due. See Deceased Coast Guard Captain, B-215304, July 23, 1984; Major John R. Frazier, B-191953, July 3, 1978; 34 Comp. Gen. 103 (1954).

If the facts in a case do not show a lack of felonious intent on the part of the person causing the death, even when there is no criminal conviction, we will not authorize payment. We will permit payment, however, in cases where there is an acquittal of criminal charges and there is no evidence that the killing was not accidental, not in self-defense, and not excusable or justifiable. See Deceased Coast Guard Captain, B-215304, supra. Payment thus is authorized to a beneficiary only when the record establishes that the beneficiary did not act with felonious intent.

The record in this case is devoid of any evidence - such as accidental killing, self-defense or an otherwise excusable reason - showing that the claimant lacked felonious intent. The only information upon which we can base judgment is the fact that Mrs. Marler pleaded guilty to manslaughter with a firearm, a felony; while such crime includes negligent acts, that is not the only basis for a manslaughter conviction. In these circumstances, we cannot authorize payment of the SBP annuity to Mrs. Marler.

The Claims Group settlement is affirmed.

for
Raymond E. ...

Robert P. Murphy
Acting General Counsel