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DECISION

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

FILE: B-215304 **DATE:** July 23, 1984

MATTER OF: Deceased Coast Guard Captain

DIGEST:

The wife of a deceased service member claims entitlement to an annuity under the Survivor Benefit Plan, where, in connection with his death, she was tried by jury and acquitted of all criminal charges. The claim may be allowed because the acquittal is sufficient indication of lack of felonious intent, absent further judicial proceedings or unusual circumstances tending to show that the claimant acted with felonious intent.

This action is in response to a request from a United States Coast Guard Certifying Officer for an advance decision to establish entitlement to an annuity under the Survivor Benefit Plan, in the case of a retired Coast Guard captain whose wife was implicated in his death.[1] We find that the annuity may be paid to the wife of the decedent since her acquittal of criminal charges and other information of record reasonably establish that she acted without felonious intent in the death of her husband.

Background

The record indicates that the captain was killed on February 27, 1983, by a stab wound in the chest inflicted during an altercation with his wife. She was charged with second-degree murder and was tried by a jury in the Circuit Court for Broward County, Florida, in December, 1983. She was acquitted of all charges in connection with the matter.

Transcripts of testimony at the trial and other information of record indicate that earlier in the evening on the night of his death, the captain had physically beaten his wife. She stated that she secured a knife from their motor

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[1] The request was submitted by Mr. E. J. Rowe, Authorized Certifying Officer, U.S. Coast Guard, Washington, D.C. It was coordinated with the Department of Defense Military Pay and Allowance Committee which assigned it control number CG-ACO-1440.

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coach, where they were staying, to take her own life and that her husband grabbed the knife by the blade to prevent her from doing so. In the ensuing struggle, he was fatally stabbed. It was determined by the medical examiner who performed the autopsy on the captain that his death was a result of the chest wound, and that he was intoxicated at the time of his death. There was also testimony adduced at trial that indicates that the wife had on prior occasions suffered abuse inflicted by her husband and that she contemplated taking her own life with the weapon that ultimately killed her husband.

The certifying officer questions whether the wife is entitled to the Survivor Benefit Plan annuity otherwise payable to her under 10 U.S.C. § 1450 (1982) because, despite her acquittal of all criminal charges, she nevertheless had participated in her husband's death.

Analysis

It is a well-established general principle of law that a person may not profit from his own wrongful acts. For example, in New York Mutual Life Insurance Co. v. Armstrong, 117 U.S. 591, 600 (1886), the United States Supreme Court stated that--

> "It would be a reproach to the jurisprudence of the country, if one could recover insurance money payable on the death of a party whose life he had feloniously taken."

See also to the same effect Prudential Insurance Company of America v. Tull, 690 F.2d 848 (4th Cir. 1982).

Accordingly, we have uniformly held that it is against public policy to permit payment by the Government of arrears of pay, compensation or other benefits to an heir or beneficiary who feloniously kills the person upon whose death such payments hinge. And, we have declined to authorize payment to the person involved in the death, even in cases where that person has not been convicted of criminal charges, if all the facts do not reasonably establish a lack of felonious intent on that person's part. See, for example, 55 Comp. Gen. 1033 (1976). However, where there has been an acquittal on criminal charges, barring other strong evidence

that the killing was not accidental, not in self-defense, and not otherwise excusable or justifiable, we have allowed payment. See for example B-172014, October 7, 1971, and B-172014, March 11, 1971.

In the present case it appears that the defense raised at trial was that the captain was accidentally killed when he attempted to wrest the knife from his wife who intended to kill herself with it. Apparently, the jury after hearing all the evidence acquitted the wife on that basis. The acquittal along with the other information we have been furnished establishes with reasonable clarity a finding that the wife lacked felonious intent. That view is further supported by informal advice we have received from the Veterans Administration that they have found her to be eligible to receive benefits payable by that agency. Accordingly, the widow in this case is entitled to annuity payments under the Survivor Benefit Plan.

for Shelton J. Bowen
Comptroller General
of the United States