

KEYWORDS: military member claim; death gratuity

DIGEST: The interpretation of a statute by the agency charged with its implementation, is entitled to deference and should be sustained if it is a reasonable interpretation.

CASENO: 2010-CL-071901.2

DATE: 8/31/2010

DATE: August 31, 2010

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In Re: )  
          ) [REDACTED] ) Claims Case No. 2010-CL-071901.2  
          ) )  
Claimant )

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**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

The interpretation of a statute by the agency charged with its implementation, is entitled to deference and should be sustained if it is a reasonable interpretation.

**DECISION**

The natural mother of a deceased member of the United States Army requests reconsideration of the July 26, 2010, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2010-CL-071901. In that decision, DOHA disallowed a claim for \$50,000 by the claimant who contends that she should be paid the entire death gratuity payment<sup>1</sup> occasioned by the member's death, to the exclusion of any payment to the natural father.

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<sup>1</sup>The statutory entitlement to payment is contained in Title 10, United States Code, Sections 1475 through 1480 (10 U.S.C. §§ 1475-1480).

## Background

The records indicate that the member died on March 2, 2010, and was not survived by a spouse or children. On his DD Form 93, *Record of Emergency Data*, completed in December 2009, the member did not complete Block 11a, Beneficiary(ies) for Death Gratuity, and therefore he did not specifically designate a beneficiary to receive his death gratuity. The member specifically identified his mother and father in Blocks 6 and 7 of the DD Form 93. He also requested in Block 8 that his father not be notified due to ill health, and specifically designated his mother in Block 12 as the 100 percent beneficiary for unpaid pay and allowances. The Defense Finance and Accounting Service (DFAS) found that the member's parents, the natural mother and father, are considered to be the member's parents for purposes of beneficiary entitlement under 10 U.S.C. § 1477(b)(3); and since the member did not designate a beneficiary to receive his death gratuity, payment must be made in accordance with the order of precedence set forth in 10 U.S.C. § 1477(b). When there is no surviving spouse or child, the surviving parents (or survivor of them) are the highest in the order of precedence.

The claimant acknowledges that it was an oversight that her son did not designate her as the sole recipient in Block 11a, but she argues that the member's intent was clear based on his designation of her as sole recipient of unpaid pay and allowances in Block 12, and as the person who would direct his disposition in Block 13. On reconsideration, the claimant also provided a copy of the member's Servicemembers' Group Life Insurance (SGLI) Election showing that she was designated to receive 100 percent of the proceeds under that program. She explains that the member had a poor or nonexistent relationship with his father, and that she should be given preference for the father's portion of the death gratuity payment. She contends that the natural father abandoned the member, provided no health insurance and only sporadic child support payments in violation of his legal obligations, and rarely visited his children. The claimant again asserts that under the language of 10 U.S.C. § 1477(c) regarding treatment of parents, "it is within the discretion of the Secretary to give appropriate preference to [the claimant], and to exclude the absentee father . . . with respect to the death gratuity . . ."<sup>2</sup>

## Discussion

Preliminarily, we recognize the tragic nature of this situation, and for purposes of this reconsideration request, accept the claimant's description of the nature of the relationship between the member and his natural father. Nevertheless, we must objectively examine this claim against the government's legal liability.

While not directly relevant, we do not believe that a neutral fact finder would necessarily agree with the claimant's assertion that the portions of the DD Form 93, other than Block 11,

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<sup>2</sup>"For purposes of subsection (b)(3), parents include fathers and mothers through adoption. However, only one father and one mother may be recognized in any case, and preference shall be given to those who exercised a parental relationship on the date, or most nearly before the date, on which the decedent entered a status described in section 1475 or 1476 of this title."

clearly indicate the member intended that only his mother was supposed to be the beneficiary of his death gratuity. An objective look at the absence of a designation in Block 11, coupled with specific sole designations by the member of his mother in Blocks 12, 13, and for his SGLI, reasonably suggests that the member knew how to designate his mother as a sole beneficiary if he intended that result. At a minimum, the failure to designate her as sole beneficiary in Block 11, while making sole designations for her in the other portions of DD Form 93, only adds to the ambiguity of the member's intent. In any event, without completion of Block 11, the statutory default scheme in 10 U.S.C. § 1477(b) is the means of determining a proper beneficiary.

The interpretation of 10 U.S.C. § 1477(c) by DFAS, the agency charged with its implementation, is entitled to deference and should be sustained if it is a reasonable interpretation, even if not the only reasonable reading of it. *See* DOHA Claims Case No. 2009-CL-121402.3 (April 21, 2010); DOHA Claims Case No. 09051901 (July 16, 2009). *See also* the Comptroller General's decision in B-317634, n. 24, Aug. 17, 2009, and 71 Comp. Gen. 467, 469 (1992) and decisions cited therein. As DFAS's Assistant General Counsel explained, the plain meaning of this provision is to limit parental beneficiaries to only one qualifying mother and only one qualifying father, when competing claims are received by more than one alleged mother or more than one alleged father. As further suggested by the attorney examiner who prepared DOHA's appeal decision, the language of the statute is attempting to recognize situations in which a member, who may not have designated beneficiaries, may have adoptive parents who have exercised a parental relationship with the member in place of the biological parents. In that case, Subsection 1477(c) allows payment to the adoptive parent(s) over the biological parent(s). The claimant's construction of Subsection 1477(c) is strained because nothing in the statutory language, nor any regulatory guidelines, suggests that a government official would have authority to determine, as between the two natural parents, whether one parent exercised a better, fuller, or happier relationship with the member than the other parent.

### **Conclusion**

For the reasons stated above, the claimant's request for reconsideration is denied, and we affirm DOHA's July 26, 2010 appeal decision in DOHA Claim No. 2010-CL-071902 and DFAS's initial determination. In accordance with Department of Defense Instruction 1340.21, ¶ E7.15.2, this is the final administrative action of the Department of Defense in this matter.

Signed: Michael D. Hipple

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Michael D. Hipple  
Chairman, Claims Appeals Board

Signed: Jean E. Smallin

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Jean E. Smallin  
Member, Claims Appeals Board

Signed: William S. Fields

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William S. Fields  
Member, Claims Appeals Board