

DATE: November 7, 2014

In Re:

[REDACTED]

Claimant

)
)
)
)
)

Claims Case No. 2013-CL-103001.2

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

When payment of a death gratuity is erroneously made to a person clearly not entitled to it due to administrative error and the error resulted from improper maintenance of records or administrative negligence, a second payment should be made to the proper beneficiary, and collection should be initiated from the ineligible recipient in accordance with the Department of Defense Financial Management Regulation, Volume 7A, paragraph 360109.

DECISION

The Defense Finance and Accounting Service (DFAS) requested reconsideration of the April 22, 2014, decision of the Defense Office of Hearings and Appeals (DOHA), in DOHA Claims Case No. 2013-CL-103001. In that decision, our Office allowed the claim of the member's father for his death gratuity, along with collection of the earlier erroneous death gratuity payment from the member's ex-spouse. This second payment of a death gratuity was proper because the previous payment of the death gratuity to the member's ex-spouse was erroneous.

Background

The member was on active service in the United States Navy. He died while on active duty in a motorcycle accident on June 17, 2012. On June 18, 2012, the member's father claimed the death gratuity payment by submitting a DD Form 397, *Claim Certification and Voucher for Death Gratuity Payment*. On June 22, 2012, the Report of Casualty was prepared. The Navy reviewed the member's *Dependency Application/Record of Emergency Data (RED)*, NAVPERS 1070/602. The most recent RED, which the member attempted to complete on April 5, 2012,

was not signed by the member. The RED that the member previously completed was dated March 2, 2011. Based on the entry in the death gratuity block of the Page 2 of the RED certified by the member on March 2, 2011, the Navy issued the death gratuity payment to the member's ex-spouse.

The member and his spouse were divorced on November 15, 2011. In early 2012, the member was identified as one of a number of personnel at his base due for an update of his RED. The member visited his administrative office on April 5, 2012, and told the enlisted person assisting him that he wanted to change the beneficiary for the death gratuity from his ex-spouse to his father. The member also noted that he had recently been called up as an Individual Augmentee (IA) and had been overpaid Basic Allowance for Housing (BAH) with dependents for over five months. On that date, the enlisted person assisting the member updated his RED to reflect his father as the beneficiary and printed it out. He did not tell the member that it was necessary to sign the RED. He did inform the member that the form had to be hand-carried to another administrative office for review. The member offered to take the form himself, and the enlisted person gave it to him. It should be noted that the system that was in place at the member's base was not in line with the Navy's mandated system, the Transaction Online Processing System (TOPS), as discussed below; and in addition, handing the form to the member to carry personally was a deviation from the system in use. Because of this deviation, no one could identify where the member's form was located in this system and whether it had been properly processed. On May 14, 2012, the member arrived at the administrative office where he had been directed to take his form. When the member initially arrived, he inquired about his pay status. The individual assisting him at that office told him that he could not assist him without his RED and a copy of his divorce decree. The member left the office and returned with his unsigned RED and a copy of his divorce decree. The individual assisting him at this office used these documents to update the member's Master Military Pay Account (MMPA) to reflect the member's entitlement to BAH at the single rate rather than the dependent rate. In another deviation from the unauthorized system then in use, the individual assisting him retained the unsigned RED. He did not advise the member that it was necessary to sign the RED or that any further processing was required.

Slightly over a month later, on June 17, 2012, the member died of injuries from a motorcycle accident; the member's father claimed his son's death gratuity the next day. Navy personnel began searching for the document the member had attempted to update a month prior to his death. When that document was located, the Navy saw that the form had been updated but not signed by the member. The Navy then relied on the RED that the member previously completed, dated March 2, 2011, which identified the member's ex-spouse as his death gratuity beneficiary. Thereupon, the Navy instructed DFAS to make the payment to her, and the payment was made. When the member's father continued to pursue his claim, the Navy performed a thorough investigation and identified multiple errors in the processing of the member's attempted change of designation. As a result, the Navy instructed DFAS to make a death gratuity payment to the member's father and to collect the original payment from the member's ex-spouse. DFAS did not make the second payment. This Office issued an decision allowing the father's claim for the death gratuity, and DFAS appealed our decision.

Discussion

The payment of death gratuities is governed by 10 U.S.C. §§ 1475-1480 as implemented by Chapter 36 of Volume 7A of the Department of Defense Financial Management Regulation (DoDFMR), Military Pay Policy and Procedures—Active Duty and Reserve Pay. Paragraph 360109, states:

An erroneous payment of death gratuity is one made to a person clearly not entitled to it because of administrative error, rather than because of statements of record made by the member.

A. Make second payment to the rightful beneficiary when the error resulted from improper maintenance of records or administrative negligence. Do not delay this payment pending recovery of the erroneous payment from the ineligible recipient.

B. Do not make a second payment of death gratuity to a different person if the original payment was based on statements of record made by the member, and the Government has no reason to doubt the beneficiary's status was as stated.

At the time of the member's death, responsibility for payment of a death gratuity on behalf of a Navy member was set out in Table 36-4, DoDFMR, Volume 7A.¹ The table states that the proper beneficiary is determined by an official identified in the Navy's Directorate, Military Personnel Readiness and Community Support Office (N135C). DFAS then pays the death gratuity upon authorization by N135C.

Initial consideration of the information available, particularly the RED which contained the member's signature, dated March 2, 2011, designating the member's ex-spouse as his beneficiary, led to payment of the death gratuity to her. The member's father continued to press his claim for the death gratuity, as the member had informed his father that he had changed this benefit prior to his death. Thus, the Navy determined that an investigation was necessary to identify the correct payee.

The record before us contains detailed information from the investigation, including statements from the personnel who assisted the member when he attempted to change his death gratuity designation. Much of the information discovered in the investigation is set out in the background section above. The investigation uncovered multiple errors due to the failure to follow proper procedures. The Customer Service Detachment (CSD) at the member's base should have used the TOPS system to record the changes requested by the member, and the TOPS system had been mandatory since March 2009.² Instead of using TOPS, the head of the CSD at the member's base, in this case a lower-level civilian employee, had instituted, with no authorization, a lengthy and convoluted system for recording changes. The employee who instituted the unauthorized system did not fully explain it to the other personnel, including the

¹ The information is now in Table 36-5.

² Navy Admin Message, No. 44, Subj: Mandatory Use of Transaction On-Line Processing System for Non-Afloat Commands, dated Feb. 6, 2009.

employee who corrected the member's BAH entitlement. That employee filed the change documents in his office and did not tell the member that the process to change the death gratuity designation had not been completed or that he needed to sign the form to accomplish that change. Under the unauthorized process, he should have pointed out to the member that the form was not signed and therefore was not complete. He could have either had the member sign the form in his office or directed him back to the office from which he had received the form. In either case, the employee's action of taking the form and filing it in his office unsigned left the member with no chance that the deficiency would be recognized or rectified.

Therefore, in light of the above, the Navy determined that the payment to the member's ex-spouse was erroneous according to paragraph 360109 of the DoDFMR and that the error was the result of improper maintenance of records or administrative negligence, as required by subparagraph 360109.A. After a thorough investigation, the Navy identified the member's father as the proper beneficiary and requested that DFAS make a second payment. The Navy also directed that collection be made from the incorrect beneficiary, the member's ex-spouse. This Office finds the Navy's request for a second payment and collection of the earlier incorrect payment to be proper under the DoDFMR and the specific facts of this case.³

DFAS declined to make a second death gratuity payment based upon the fact that there was a signed RED in the member's file which designated his ex-spouse to receive the death gratuity. In making that decision, DFAS relied primarily on two Comptroller General decisions regarding Arrears of Pay (AOP): B-168397, Dec. 22, 1969; and B-177572, Apr. 26, 1973. Because the AOP statute, 10 U.S.C. § 2771, prohibits a second payment once a first check has been issued, a signed designation is especially important.⁴ In DOHA's appeal decision, the adjudicator based her determination on the death gratuity provisions of the DoDFMR and the facts presented above. In response to DFAS' argument, she distinguished between AOP and death gratuity cases.

In making the above distinction, however, the adjudicator did not intend to communicate that DOHA does not view a member's signed designation as a primary indicator of his intent with regard to payment of a death gratuity. This Office has affirmed the importance of the member's signature on a designation form, and we continue to uphold that principle. *See* DOHA Claims Case No. 2010-CL-071901.2 (August 31, 2010).

³ Specifically in this case, the Navy's Director, Military Personnel Readiness and Community Support (N135) recommended to the Navy's Director, Military Personnel Readiness and Community Support (N13) that a second payment be made to the proper beneficiary and that collection be initiated from the incorrect beneficiary. N13 forwarded that request to DFAS. That action was proper, since the individual making the decision (Rear Admiral/Upper Half) was in a position directly above the one indicated in the DoDFMR (Rear Admiral/Lower Half).

⁴ However, even in AOP cases, the Comptroller General allowed an exception to the rule of the signature as final authority for payment, stating that the signed form would be followed, even with clerical errors or ambiguities, "in the absence of a substantial showing that the member did not intend to designate the beneficiaries listed therein." *See* B-180205, Nov. 13, 1974. By analogy, under the circumstances of the present case, we believe that the Comptroller General would not have based payment on the signed designation form in the file, because the facts demonstrate the "substantial showing" exception to which the Comptroller referred.

However, we cannot overlook DoDFMR paragraph 360109 when the rare circumstances described in 360109.A are present, *i.e.*, when the erroneous first payment resulted from improper maintenance of records or administrative negligence.⁵ While DFAS argues that no error occurred, the Navy’s investigation clearly identified a number of serious errors in the processing of the member’s RED. Navy officials, including the Director, Military Personnel Plans and Policy Division, reviewed the findings of the investigation before properly requesting that a second death gratuity payment be made to the member’s father and that collection of the erroneous first payment be initiated. This Office agrees with the Navy’s conclusion that the errors they identified justified a request under paragraph 360109.A for a second death gratuity payment, along with collection of the erroneous first payment. If collection is accomplished, the second payment will result in no loss to the government.

Conclusion

The Board affirms the decision to allow the payment of a death gratuity to the member’s father and to initiate the collection of the erroneous first death gratuity payment from the member’s ex-spouse. In accordance with the Department of Defense Instruction 1340.21 ¶ E7.15, this is the final administrative action of the Department of Defense in this matter.

Jean E. Smallin
Chairman, Claims Appeals Board

Gregg A. Cervi
Member, Claims Appeals Board

Natalie Lewis Bley
Member, Claims Appeals Board

⁵ This provision of DoDFMR paragraph 360109.A related to erroneous payments is based on 37 Comp. Gen. 131 (1957). Commenting on an earlier version of the death gratuity, the Comptroller General stated that “where because of misfiling or nonfiling of records, or delay in the transmission of records between stations, or failure by the administrative offices to give proper recognition to circumstances casting doubt on the propriety of the payment, etc., the gratuity has been paid to a person not entitled, payment to the rightful beneficiary should not be delayed or withheld pending recovery of the erroneous payment.” *Id.* At 133.