

DATE: 03-11-91

CITATION: VAOPGCPREC 20-91
Vet. Aff. Op. Gen. Couns. Prec. 20-91

TEXT:

SUBJECT: Statute of Limitations for Claims Against the General Post Fund.

(This opinion, previously issued as Opinion of the General Counsel 9-71, dated June 14, 1971, is reissued as a Precedent Opinion pursuant to 38 C.F.R. §§ 2.6(e)(9) and 14.507. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

To: Chief Attorney, VARO, Roanoke, VA

QUESTION:

Whether the expiration of the five-year statute of limitations for submissions of claims against the General Post Fund under 38 U.S.C. § 5226 bars the claim of the heirs of a veteran who were known to the VA at the time of the death of the veteran.

COMMENTS:

This veteran was admitted to a VA hospital on April 5, 1953, and died there on December 22, 1961, survived by three sons. At the time of his death, the VA was in contact with at least one of the sons with regard to the funeral arrangements.

The hospital had on deposit to the veteran's credit \$1,782.19 derived from private sources. On July 12, 1963, that sum was forwarded to Central Office as unclaimed funds for deposit to the General Post Fund. On February 3, 1964, VA advised one of the sons by letter of the personal funds left, but also advised him that a claim would have to be filed by a legally appointed administrator. No claim was filed until March 17, 1971, almost ten years after the death of the veteran.

It should be noted at the outset that the funds in question are subject to the provisions of Subchapter I of Chapter 85, title 38, United States Code. As such, disposition should be made under VA Regulations 4800 through 4813.

VAR 4805 provides in part:

"(A) If there exists no designee at the time of death at a hospital, domiciliary, or regional office of a veteran admitted as competent, or the designee fails or

refuses to claim the funds and effects as defined in VA Regulation 4800(A) within 90 days following the mailing of notice to such designee, the station head will take appropriate action to dispose of the effects to the person or persons legally entitled thereto, i.e., the executor or administrator of the decedent, or, if no notice of such an appointment has been received, to the decedent's widow, child, grandchild, mother, father, grandmother, grandfather, brother, or sister, in the order named. Subject to the applicable provisions of VA Regulations 4803 and 4804, such delivery may be made at any time before the sale contemplated by VA Regulation 4809 to the designee or other person entitled under the facts of the case. Delivery will be made to the person entitled to priority as prescribed in this subparagraph, unless such person waives right to possession, in which event delivery will be to the person, if any, in whose favor such prior entitled person waives right to possession. If the waiver is not in favor of a particular person or class, delivery will be to the person or persons next in order of priority under this subparagraph. If in any case there be more than one person in the class entitled to priority, initially or by reason of waiver, delivery will be made only to their joint designated agent (who may, but need not, be one of the class), or to one of such class in his own behalf upon written waiver of all others of the class entitled thereto. The guardian of a minor or incompetent may waive his ward's prior right to possession.

"(B) Except where delivery is made to a designee, executor, or administrator, funds of veterans who were competent at time of death will be released to the person or persons who would ultimately be entitled to distribution under the laws of the State of the decedent's domicile. The person or persons entitled may waive in writing his or her right to the funds in favor of another heir or next of kin."

VA Manual MP-4, Part I, paragraph 3.12 provides in pertinent part:

"a. General. Funds of patients who die in VA hospitals, centers, domiciliaries, contract hospitals or other institutions--Federal, State, or private--will be disposed of in accordance VA Regulation 4800 series.

"c. Competent Patients. Funds on deposit to the credit of a patient at time of death and funds which may accrue to the credit of the account of the deceased veteran subsequent to the date of death will be disposed of by the payment of claims to entitled claimants. In connection with the above, the following instructions are applicable:

"(4) When it is indicated that no administrator or executor has been or will be appointed, distribution of the funds may be made to the person or persons found entitled under the intestacy laws of the State of the veteran's last residence, with due regard to exemptions and allowances, the order of payment or debts, and heirs. Payments will be made on the basis of SF 1055, with necessary supporting evidence."

VA Manual MP-4, Part I, paragraph 3.13 provides in part:

"a. Balances in Personal Funds of Patients belonging to a veteran who dies while receiving care at the expense of the VA will be transferred to the General Post Fund only after it is determined that the veteran did not leave a spouse, heir, or next of kin. The VA records (including the hospital file and claims folder) as well as any other available information will be thoroughly examined in making such determination ..."

On July 12, 1963, a Standard Form No. 1081 was prepared to transfer the funds from the VA hospital to Central Office for credit to the General Post Fund. It stated that the money represented unclaimed private source funds.

MP-4, Part I, DM & S Supplement, paragraph 3.14d provides:

"d. When Disposition of Funds Cannot Be Accomplished. Funds of deceased veterans on deposit in Personal Funds of Patients which cannot be disposed of in accordance with VA Regulations 4800 through 4813 will be restored to the current applicable benefit appropriation where such funds can be readily identified as having been received from such sources. Otherwise they will be transferred as a general donation to the General Post Fund. (See VA Regulation 4819.) Such transfers will be effected locally by the use of SF 1081."

We recognize the statutory, regulatory, and manual provision limitations of payments from the General Post Fund, and the requirement that timely application must be made therefor. It is our view, however, that such limitations are binding only when the funds are properly deposited in the General Post Fund account. In the case at hand, further action should have been taken to transfer the subject funds to the known heirs of the deceased after it was ascertained that no immediate claim would be received from an administrator of his estate. Such funds should have been transferred to the General Post Fund only when they could not be transferred to the next of kin. Accordingly, the current claim filed may be recognized as valid and payment made thereunder, if otherwise proper.

HELD:

The 5-year statute of limitations for filing claims under 38 U.S.C. § 5226 should not bar a claim where the VA was aware of the existence of heirs at the time of the veteran's death and did not take proper action to transfer funds to the known heirs before making deposit to credit of General Post Fund.

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