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

31099

B-178493 June 21, 1973

Mr. Robert A. Young
Chief, Accounting and Finance Division
Defense Construction Supply Center
Defense Supply Agency
Columbus, Ohio 43215

Dear Mr. Young:

Your letter of April 17, 1973, requests our advice as to the proper distribution of unpaid compensation due Henry Dailey, Jr., deceased former employee of the Defense Construction Supply Center, at the time of his death. Two separate claims have been filed for the compensation--one by the mother of the deceased and one by the mother of deceased's illegitimate child.

The statute governing the disposition of unpaid compensation due deceased employees of the Federal Government is codified at section 5582 of title 5, United States Code. That section provides in part as follows:

> (b) In order to facilitate the settlement of the accounts of deceased employees, money due an employee at the time of his death shall be paid to the person or persons surviving at the date of death, in the following order of precedence, and the payment bars recovery by another person of amounts so paid:
>
> First, to the beneficiary or beneficiaries designated by the employee in a writing received in the employing agency before his death.
>
> Second, if there is no designated beneficiary, to the widow or widower of the employee.
>
> Third, if none of the above, to the child or children of the employee and descendants of deceased children by representation.
>
> Fourth, if none of the above, to the parents of the employee or the survivor of them.

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We have consistently held that determination of the allowance or disallowance of payments to illegitimate children under the above-cited statute is to be made on the basis of applicable State law.

In this case, under the descent and distribution statutes of the State of Ohio, illegitimate children inherit and transmit from, to, and through their mother. However, under section 2105.18 of the Ohio Revised Code Annotated, an illegitimate child may be legitimated upon an acknowledgment of paternity filed by the father in the probate court of the county in which he or the child resides.

Copies of documents submitted with your letter show that a Journal Entry was made on March 14, 1969, in the Court of Common Pleas, Division of Domestic Relations, Franklin County, Ohio, indicating that the deceased had acknowledged paternity of the child and ordering him to pay child support. Another Journal Entry, this one in the Probate Court of Franklin County, shows that on July 1, 1969, the Court approved a petition changing the child's last name to that of the deceased.

We have been informally advised by a probate referee of the Probate Court of Franklin County that an acknowledgment of paternity is a separate proceeding in the Probate Court and that neither of the two above-mentioned court proceedings would meet the requirements of section 2105.18 to legitimate the child and thus allow her to inherit from her father under Ohio law. Since it appears that the parties involved all lived in Columbus, Ohio, it is reasonable to assume that had the deceased wanted to legitimate his daughter he had the opportunity and could have done so by filing the required application in the Probate Court of Franklin County.

Therefore, in the absence of a showing that the child was legitimated as required by Ohio law, you are advised that payment of the unpaid compensation due Henry Bailey, Jr., at the time of his death should be made to his mother, Frances B. Hollis.

Sincerely yours,

PAUL G. DEMBLING

For the Comptroller General
of the United States