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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: John P. Donohoe, USN (Retired) (Deceased)

File: B-243907

Date: July 26, 1991

DECISION

This refers to an appeal by James F. Donohoe of our Claims Group's settlement denying his claim for the unpaid retired pay due his late brother, John P. Donohoe, USN. Our Claims Group concluded that under 10 U.S.C. § 2771 John Donohoe's natural children, although adopted by another person, are entitled to the unpaid retired pay. The Claims Group's settlement is affirmed.

John P. Donohoe, a resident of Virginia, died there on July 28, 1990, apparently intestate. There is no record that he had designated a beneficiary to receive the unpaid retired pay. The record also shows that Alice Marie Donohoe, John Patrick Donohoe, and Michael Wayne Donohoe are the natural children of John P. Donohoe and Lottie J. Parleir. Under a Final Order of Adoption issued by the Circuit Court of the City of Roanoke, Virginia, dated April 9, 1979, they were adopted by Russell J. Parleir and his wife, Lottie J. Parleir, the children's natural mother. James Donohoe, the decedent's brother, paid the funeral expenses. Mr. Donohoe is claiming the unpaid retired pay on the basis that if no children are entitled to the pay under 10 U.S.C. § 2771, he would receive the retired pay under the law of the state where the decedent was domiciled. He argues that under Virginia law adoption severs any relationship between the child and its biological parent.

Under 10 U.S.C. § 2771, any retired pay unpaid at the time of the member's death is paid to the person highest on a list set out in the statute who is living on the date of the member's death. That list includes a designated beneficiary, a surviving spouse, the member's children and their descendants, the member's parents in equal parts or the survivor, the member's legal representative, or a person entitled under the law of the state where the member is domiciled.

Section 63.1-233 of the Virginia code, which deals with adoption, provides that adoption severs the parent-child

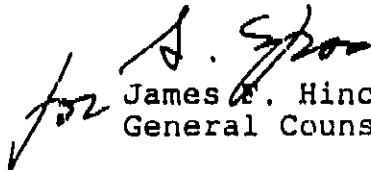
relationship. However, § 64.1-5.1, dealing with wills and decedents' estates, provides a definition for "child" and provides in pertinent part:

"If, for purposes of this title, a relationship of parent and child must be established to determine succession by, through or from a person:

1. An adopted person is the child of an adopting parent and not of the biological parents, except that adoption of a child by the spouse of a biological parent has no effect on the relationship between the child and either biological parent...." (Emphasis added.)

This provision, which was enacted subsequent to § 64.1-5.1, clearly creates an exception to the general rule that adoption severs ties between the biological parent and adopted child. Thus, adoption of children in these circumstances does not affect the father-child relationship for the purpose of the decedent's estate.

Accordingly, under 10 U.S.C. § 2771 the three children of John P. Donohoe, although adopted by another, are the beneficiaries highest on the statute's list and are entitled to the retired pay due at his death. Accordingly, James Donohoe's claim must be denied, and the Claims Group's settlement is sustained. The children should be contacted and advised of this action.


James F. Hinchman
General Counsel