

**United States Department of Labor  
Employees' Compensation Appeals Board**

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M.A., claiming as widow of M.B., Appellant )

and )

DEPARTMENT OF JUSTICE, BUREAU OF )  
PRISONS, Butner, NC, Employer )

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**Docket No. 15-1479**  
**Issued: March 7, 2016**

*Appearances:*

Lewis A. Thompson, III, Esq., for the appellant  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On June 29, 2015 appellant, through counsel, filed a timely appeal from a January 8, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over merits of this case.

**ISSUE**

The issue is whether appellant, as his widow, is eligible for survivor benefits.

**FACTUAL HISTORY**

On November 26, 2013 the employee, then a 54-year-old food service officer, was pinned under a delivery truck at his place of employment and died. OWCP accepted that the employee died on November 26, 2013 while in the performance of his federal duties.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

Appellant filed a claim for compensation by widow (Form CA-5). She alleged that she was the employee's widow as she had lived with him in a "common-law" marriage relationship for 13 years prior to his death. The form noted the deceased employee had a daughter, date of birth October 7, 1979, and a son, date of birth July 29, 1985.

On January 7, 2014 appellant submitted a December 19, 2013 letter of administration from a North Carolina Probate Court, which named her as the fiduciary of the employee's estate.

By decision dated March 6, 2014, OWCP accepted the employee's death claim. However, it determined that there were no eligible beneficiaries for survivor benefits. OWCP found that both of the employee's children were over 23 years of age and there was no widow as the evidence did not establish that the employee was legally married at the time of his death. It reimbursed burial expenses to the estate in the amount of \$800.00 and an administrative fee of \$200.00.<sup>2</sup>

On December 1, 2014 appellant's counsel filed a request for reconsideration. He argued that appellant was entitled to death benefits as she and the employee had resided together for more than 13 years prior to his death and that they had considered themselves to be husband and wife and had represented themselves that way to family, friends, and the community as a married couple. Counsel noted that the state of North Carolina, where appellant and the employee resided, did not recognize common law marriage, but contended that fact should not bar her as a beneficiary under FECA. He noted that other states recognize common law marriage and to bar appellant from survivor benefits would prevent the employee's estate from pursuing a Wrongful Death Benefit under North Carolina General Statutes.

Other records included evidence that appellant and the employee shared property, finances, and that appellant could be the designee for the employee's life insurance. Appellant also submitted a birthday card entitled "To My Wife" signed by "Michael."

Of record is a Notice of Unsafe or Unhealthful Working Conditions from OSHA to the employing establishment and a November 27, 2013 memorandum which discussed the circumstances of the employee's traumatic death.

By decision dated January 8, 2015, OWCP denied modification of the March 6, 2014 decision. It again determined that appellant was not an eligible survivor under FECA.

### **LEGAL PRECEDENT**

With respect to compensation in the case of death, section 8133 of FECA provides the following:

If death results from an injury sustained in the performance of duty, the United States shall pay a monthly compensation equal to a percentage of the monthly pay of the deceased employee in accordance with the following schedule:

- (1) To the widow or widower, if there is no child, 50 percent.

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<sup>2</sup> 5 U.S.C. § 8134(a); § 8109(a)(3)(D)(v).

(2) To the widow or widower, if there is a child, 45 percent and in addition 15 percent for each child not to exceed a total of 75 percent for the widow or widower and children.<sup>3</sup>

(3) To the children, if there is no widow or widower, 40 percent for one child and 15 percent additional for each additional child not to exceed a total of 75 percent, divided among the children share and share alike.<sup>4</sup>

The term “widow” is defined in section 8101(6) of FECA to mean “the wife living with or dependent for support on the decedent at the time of his death, or living apart for reasonable cause or because of his desertion.”

The Board has held that the validity of a marriage is to be determined by the law of the place where the alleged marriage took place.<sup>5</sup>

### ANALYSIS

As the above legal precedent indicates, 5 U.S.C. § 8133 provides a comprehensive statutory scheme for the payment of compensation in the case of death causally related to federal employment. Appellant is claiming survivor benefits under FECA as the widow of the employee. OWCP denied the claim finding appellant not entitled to survivor benefits as there was no evidence that she was legally married at the time of the employee’s death.<sup>6</sup>

It is well established that questions before the Board affecting relationship, such as the validity of marriage or divorce, are determined by the statutory and decisional domestic relations law of the jurisdiction where the alleged marriage took place.<sup>7</sup> In the present case, the laws of North Carolina are applicable. North Carolina law does not recognize common law marriages.<sup>8</sup> The only instance where North Carolina will recognize a common law marriage is if the couple entered into a common law marriage in another state, which does recognize common law marriages, and if that couple later moves to North Carolina, then North Carolina will recognize their common law marriage as a valid legal marriage.<sup>9</sup>

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<sup>3</sup> Section 8133 of FECA also provides that a child of an employee whose death resulted from a work-related injury may receive survivor benefits if the child is younger than 18 years of age or, if older, is incapable of self-support.<sup>3</sup> Section 8110(a)(3) of FECA provides that a child is considered a dependent if he or she is under 18 years of age, is over 18 but is unmarried and incapable of self-support because of a physical or mental disability or is an unmarried student, as defined under FECA section 8101(17).

<sup>4</sup> 5 U.S.C. § 8133.

<sup>5</sup> *Marolyn M. Videto*, 23 ECAB 207 (1972).

<sup>6</sup> The March 6, 2014 OWCP decision also denied survivor benefits to the deceased employee’s children as they were over 23 years of age at the time of the employee’s death.

<sup>7</sup> *Andrew J. Kravic*, 57 ECAB 526 (2006); *Leon J. Mormann*, 51 ECAB 680 (2000); *Mary Bee McCabe (George S. Sampio)*, 35 ECAB 218 (1983).

<sup>8</sup> Section 51-1 North Carolina General Statutes, Requisites of marriage; solemnization.

<sup>9</sup> *Id.*

The Board finds that appellant has failed to establish that she is the widow of the deceased employee. The state laws of North Carolina do not recognize common law marriages and there is no evidence of record that appellant and the deceased employee had entered into a common law marriage in another state which recognizes common law marriage and then resided in North Carolina. The evidence that appellant and the deceased employee shared property, finances, and the fact that she may be the designee for his life insurance does not establish that she is an eligible dependent under FECA, nor does the fact that the employee may have referred to the appellant as his wife. Appellant is not the legal spouse or “widow” of the employee, she is not entitled to compensation from the death of the deceased employee.<sup>10</sup>

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not established eligibility for survivor benefits.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the January 8, 2015 decision of the Office of Workers’ Compensation Programs is affirmed.

Issued: March 7, 2016  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees’ Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees’ Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees’ Compensation Appeals Board

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<sup>10</sup> OWCP further denied survivor benefits to the deceased employee’s children as they were over 23 years of age. At the time of the deceased employee’s death, the record reflects the deceased employee’s daughter was 34 years old and the son was 28 years old. As they were over 18 years of age and did not meet any exceptions, they are not entitled to survivor benefits.