

KEYWORDS: SBP Annuity, Survivor Benefits

DIGEST: When a member retired, he elected Survivor Benefit Plan (SBP) coverage for his spouse and child. They later divorced, and the member remarried. Under the law, his new spouse became his SBP beneficiary one year after their marriage. SBP premiums for spouse coverage should have been deducted from the member’s retired pay, but they were not. If the member had died during the period premiums were not being deducted, his spouse would have become eligible for an SBP annuity. Since the member received the benefit of the SBP coverage, waiver is not appropriate

CASE NO: 2018-WV-082103.2

DATE: 05/28/19

DATE: May 28, 2019

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In Re:)	
[REDACTED])	Claims Case No. 2018-WV-082103.2
)	
Claimant)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

When a member retired, he elected Survivor Benefit Plan (SBP) coverage for his spouse and child. They later divorced, and the member remarried. Under the law, his new spouse became his SBP beneficiary one year after their marriage. SBP premiums for spouse coverage should have been deducted from the member’s retired pay, but they were not. If the member had died during the period premiums were not being deducted, his spouse would have become eligible for an SBP annuity. Since the member received the benefit of the SBP coverage, waiver is not appropriate.

DECISION

A retired member of the United States Army National Guard requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2018-WV-082103, dated April 30, 2019. In that decision, DOHA denied the member's

application for a waiver of an indebtedness of \$10,553.09 that he incurred when Survivor Benefit Plan (SBP) premiums were not withheld from his retired pay.

Background

The member retired from the Army National Guard on December 31, 2004. He elected SBP coverage for his spouse and child. However, the member subsequently divorced his spouse in February 2005. He notified the Defense Finance and Accounting Service (DFAS) in April 2005 of his divorce and requested child only SBP coverage.¹ The member remarried in April 2010. In February 2017 the member notified DFAS of his 2010 marriage and requested SBP coverage for his new spouse. The member's SBP coverage should have been spouse and child coverage effective on the one-year anniversary of his marriage to his new spouse, April 2011. However, no SBP premiums were withheld from his retired pay for spouse coverage during the period May 1, 2011, through February 28, 2017. As a result, the member was overpaid \$10,553.00 in retired pay during this period.

DFAS denied the member's request for waiver, and the member appealed to DOHA. Our office determined that it would not be against equity and good conscience to collect the overpayment from the member because the member's new spouse would have been covered under SBP had he died during the period that no SBP spouse premiums were deducted from his retired pay. The unpaid spouse premiums would then have been deducted from the amount of her SBP annuity.

In the member's request for reconsideration, he states that when his marriage to his current spouse was reported in the Defense Enrollment Eligibility Reporting System (DEERS), this should have prompted DFAS to ask for additional information concerning his SBP coverage, thereby preventing the error. In addition, he requests relief based on financial hardship.

Discussion

Under 10 U.S.C. § 2774,² we have the authority to waive claims of the United States if collection would be against equity and good conscience and not in the best interest of the United States. Waiver may not be granted if there is any indication of fraud, fault, misrepresentation, or lack of good faith on the part of the member. The fact that an erroneous payment is solely a result of administrative error or mistake on the part of the government is not a sufficient basis in and of itself for granting a waiver. *See* DoD Instruction 1340.23 (Instruction) ¶ E4.1.3; and DOHA Claims Case No. 07030508 (March 13, 2007). Financial hardship is not a factor for consideration in determining whether a waiver is appropriate. *See* Instruction ¶ E4.1.7.

¹Child SBP premium deductions continued through August 2016 when the child lost eligibility.

²In the appeal decision, the DOHA adjudicator used the waiver authority under 32 U.S.C. § 716, because prior to retirement, the member served in the Army National Guard. However, the standards for waiver are the same under both 32 U.S.C. § 716 and 10 U.S.C. § 2774.

10 U.S.C. §§ 1447-1455 establishes SBP as an income maintenance program for the survivors of deceased members of the Uniformed Services. If a member ceases to have an eligible spouse beneficiary and later remarries, he may decline coverage for the subsequent spouse if he does so within the first year of marriage. *See* 10 U.S.C. § 1448(a)(6). If a member declines spousal coverage upon remarriage, notice is required to be given to his spouse. *See* 10 U.S.C. 1448(a)(6)(B). Waiver of a debt resulting from the non-deduction of SBP premiums is not proper if the member received the benefit of the coverage. *See* DOHA Claims Case No. 2017-WV-11602.2 (March 20, 2018); DOHA Claims Case No. 2015-WV-012803.2 (March 13, 2015); DOHA Claims Case No. 2012-WV-072701.2 (October 18, 2012); and DOHA Claims Case No. 08110601 (November 18, 2008).

In this case, when the member retired his first spouse and child were covered under SBP. The spouse's coverage ceased upon their divorce. When the member remarried in April 2010, his new spouse was automatically covered by SBP one year after their marriage because the member did not decline coverage for her. If the member had died during the period the premiums were not being deducted, April 2011 through February 2017, his new spouse would have been entitled to an SBP annuity. DFAS would have collected the outstanding SBP premiums from the annuity. *See* DOHA Claims Case No. 08110601, *supra*.

While we are sympathetic to the member's situation, we note that financial hardship does not provide a basis for waiver. *See* DOHA Claims Case No. 02062402 (July 18, 2002). However, DFAS, at its own discretion, may take financial hardship into account in determining the monthly amount it collects from the member. The member may contact DFAS in that regard.

Conclusion

The request for reconsideration is denied, and we affirm the appeal decision, dated April 30, 2019. In accordance Instruction 1340.23 ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

SIGNED: Catherine M. Engstrom

Catherine M. Engstrom
Chairman, Claims Appeals Board

SIGNED: Charles C. Hale

Charles C. Hale
Member, Claims Appeals Board

SIGNED: Ray T. Blank, Jr.

Ray T. Blank, Jr.
Member, Claims Appeals Board