

DIGEST: When a member retired, he elected Survivor Benefit Plan (SBP) coverage for his spouse. They later divorced, and the member remarried. Under the law, his new spouse became his SBP beneficiary one year after their marriage. SBP premiums 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.

KEYWORDS: Waiver of Indebtedness

CASE NO: 2017-WV-111602.2

DATE: 03/20/2018

DATE: March 20, 2018

In Re:)	
[REDACTED])	Claims Case No. 2017-WV-111602.2
Claimant)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

When a member retired, he elected Survivor Benefit Plan (SBP) coverage for his spouse. They later divorced, and the member remarried. Under the law, his new spouse became his SBP beneficiary one year after their marriage. SBP premiums 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 requests reconsideration of the January 18, 2018, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2017-WV-111602. In that decision, DOHA denied the member's application for a waiver of

an indebtedness of \$46,451.85 that he incurred when Survivor's Benefit Plan (SBP) premiums were not withheld from his retired pay.

Background

The member retired from the United States Army on July 1, 1988. He elected SBP coverage for his wife and child. However, the member subsequently divorced and SBP premium deductions from his retired pay for spousal coverage ceased. Child SBP premium deductions continued through June 1995, when the child lost eligibility. On September 2, 1992, the member married a different woman. Because he did not decline SBP coverage for his new spouse, she became an eligible beneficiary effective one year from the date of their marriage. SBP premiums should have been withheld from the member's retired pay effective October 1, 1993. Due to an administrative error, no SBP premiums were withheld from his account from October 1, 1993, through February 29, 2016. As a result, the member was overpaid \$46,451.85.

The Defense Finance and Accounting Service (DFAS) denied the member's request for waiver. DFAS 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 premiums were deducted from his retired pay. The unpaid premiums would have been deducted from the amount due to her.

The member appealed DFAS's denial of his waiver request. He stated that neither he nor his spouse were ever informed that he had one year from the date of their marriage to decline coverage. He stated that he was never notified by the DFAS that if he divorced and later remarried, he would have to make a decision on whether to decline or accept SBP for his new wife. He further stated that service members should not be required to have knowledge of policies or regulations that might be applicable. He stated that he cancelled SBP when he divorced so payment of premiums would stop. However, he stated that he did apply in 2016 for his new spouse to be covered by SBP,¹ and was told that he had to submit his marriage certificate. He stated that he submitted it but was never told that he would incur a debt for unpaid SBP premiums.

Our Office upheld DFAS's denial of the member's waiver request. In the appeal decision, the DOHA adjudicator found that according to the member's statement, it was his intent to provide SBP coverage for his new spouse when he submitted an SBP application in 2016. The adjudicator noted the long-standing precedent that a debt that arises due to non-deduction of SBP premiums may not be waived if the member received the benefit of the coverage.

In the member's request for reconsideration, he now states that it was never his intent to cover his new spouse by SBP. He states that he told DFAS personnel about two weeks after his September 1992 marriage that he and his new spouse wanted to decline SBP coverage. He states that in 2016 he requested that his new spouse be named as his SBP beneficiary when he noticed

¹The member submitted a DD Form 2656-6, *Survivor Benefit Election Change Certificate*, dated January 13, 2016, attempting to establish full SBP coverage for his second wife.

no beneficiary was listed on his Retiree Account Statement (RAS). He states that he thought listing her was required and would make her eligible for interest payments on the SBP payments he made before his divorce. He also states that DFAS never informed him that his decision to decline SBP coverage had not been posted to his financial record. He suggests that DFAS should be held solely responsible for the error in his case because DFAS failed to indicate in his financial records that he and his new spouse had refused coverage in 1992.

Discussion

We have the authority under 10 U.S.C. § 2774 to waive claims of the United States against members or former members of the Uniformed Services 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 or former member. The fact that a debt occurred as a result of administrative error or mistake on the part of the Government is not sufficient basis in and of itself for granting waiver. *See* DoD Instruction 1340.23 (Instruction) ¶ E4.1.3, and DOHA Claims Case No. 02120406 (December 19, 2002).

10 U.S.C. §§ 1447-1455 establishes SBP as an income maintenance program for the survivors of deceased members of the Uniformed Services.² 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. *See* 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 was covered under SBP. Her coverage ceased upon their divorce. When the member remarried in September 1992, his new spouse was automatically covered by SBP one year after their marriage since the member did not decline coverage for her. If the member had died during the period the premiums were not being deducted, October 1, 1993, through February 29, 2016, his spouse would have been entitled to an SBP annuity, although DFAS would have collected the outstanding SBP premiums from the annuity. *See* DOHA Claims Case No. 08110601, *supra*.

The member asserts in his reconsideration request that he declined SBP coverage when he called DFAS after his divorce and second marriage. While the member notified DFAS of his divorce, there is no evidence in the record of the member declining SBP coverage for his new

²The statute which established SBP, Pub. L. No. 92-425, 86 Stat. 706, was enacted in 1972.

spouse and the member has not provided any documentation showing he declined it within one year of his remarriage. In addition, there is no evidence that notice was provided to his new spouse as required by law when a member declines SBP coverage. In circumstances such as this, we accept the agency's statement of facts absent clear and convincing evidence to the contrary. *See* DOHA Claims Case No. 08110601, *supra*; and DOHA Claims Case No. 03082101 (August 29, 2003).

Conclusion

The request for reconsideration is denied, and we affirm the appeal decision, dated January 18, 2018. 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