

KEYWORDS: Waiver of Indebtedness

DIGEST: The member elected Survivor Benefit Plan (SBP) coverage for his spouse when he retired. The member divorced and subsequently remarried. He did not decline SBP coverage for his new spouse. Under law, his new spouse became his SBP beneficiary one year after their marriage. SBP premiums should have been deducted from his retired pay, but they were not. He then divorced his second spouse and remarried another. He subsequently notified the Defense Finance and Accounting Service (DFAS) about his remarriage and requested coverage for his third spouse. At that time, DFAS discovered that SBP premiums had not been deducted from his retired pay during the period he was married to his second spouse. If the member had died during his second marriage when premiums were not being deducted, his spouse would have been eligible for an SBP annuity. Since the member received the benefit of the SBP coverage, waiver is not appropriate.

CASENO: 2012-WV-100505.2

DATE: 03/28/2013

DATE: March 28, 2013

In Re:)	
[REDACTED])	Claims Case No. 2012-WV-100505.2
Claimant)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

The member elected Survivor Benefit Plan (SBP) coverage for his spouse when he retired. The member divorced and subsequently remarried. He did not decline SBP coverage for his new spouse. Under law, his new spouse became his SBP beneficiary one year after their marriage. SBP premiums should have been deducted from his retired pay, but they were not. He then divorced his second spouse and remarried another. He subsequently notified the Defense Finance and Accounting Service (DFAS) about his remarriage and requested coverage for his third spouse. At that time, DFAS discovered that SBP premiums had not been deducted from his retired pay during the period he was married to his second spouse. If the member had died during his second marriage when premiums were not being deducted, his spouse would have

been 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 Navy requests reconsideration of the February 26, 2013, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2012-WV-100505. In that decision, DOHA upheld the Defense Finance and Accounting Service's (DFAS) denial of waiver of the member's indebtedness to the government in the amount of \$4,060.88.

Background

On March 8, 1984, the member elected SBP coverage for his spouse. On April 30, 1984, the member retired from the Navy. On January 14, 2000, the member was divorced. On February 8, 2000, he requested that his SBP coverage be cancelled. On June 16, 2004, the member remarried. 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 July 1, 2005. However, SBP premiums failed to be deducted from his retired pay during the period July 1, 2005, through July 31, 2008, causing an overpayment of \$4,060.88. On July 8, 2008, the member divorced. The member subsequently remarried. On September 13, 2010, the member notified DFAS of his remarriage and requested SBP coverage for his third spouse. However, the member's marriage to his third spouse was annulled prior to their one-year anniversary. Therefore, he does not owe any SBP premiums for his third marriage.

The DOHA adjudicator determined that it would not be against equity and good conscience to collect the overpayment from the member since the member's second spouse would have been covered under SBP had he died during the period when no SBP premiums were deducted from his retired pay.

In his request for reconsideration, the member states that he has not received an erroneous payment. He states that the debt resulted from the government's failure to collect the SBP premiums from his retired pay. The member further states that he did request to cancel SBP coverage for his first spouse on February 8, 2000. He states that he wrote a letter to DFAS dated December 15, 2004, as a follow-up to his previous request to cancel SBP coverage for his first spouse. He asserts that this letter along with his submission of *Data for Payment of Retired Personnel*, DD Form 2656, terminated his participation in SBP. He contends that once he discontinued SBP, he cannot reenter the plan. He also states that the Department of Veterans Affairs (VA) granted him a service-connected disability rate of 100% effective December 15, 2004. Therefore, he contends that he no longer needed to participate in SBP for his second spouse because she qualified for Dependency and Indemnity Compensation (DIC) benefits effective December 15, 2004.

Discussion

Under 10 U.S.C. 2774, we have the authority to waive claims of the United States against members (including retired members) of the Uniformed Services if collection would be against equity and good conscience and not in the best interests 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 SBP, 10 U.S.C. §§ 1447-1460b, is an income maintenance program for survivors of deceased members of the Uniformed Services. If a member ceases to have an eligible 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). 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. 08110601 (November 18, 2008); DOHA Claims Case No. 08032002 (March 21, 2008); DOHA Claims Case No. 07030508 (March 13, 2007); DOHA Claims Case No. 02120406 (December 19, 2002); and DOHA Claims Case No. 98060410 (September 30, 1998).

In this case, when the member retired, his wife was covered under SBP. Her coverage ceased upon their divorce. When the member remarried in June 2004, his wife automatically became his SBP beneficiary one year after their marriage since he did not decline coverage for her. Her coverage ceased upon their divorce. If the member had died during the period the premiums erroneously were not being deducted, July 1, 2005, through July 8, 2008, his spouse would have been entitled to an SBP annuity, although DFAS would have collected the outstanding SBP premiums from the annuity.

Although the member asserts that he was not erroneously overpaid, we note that the failure to deduct the SBP premiums from the member's retired pay resulted in the member erroneously being overpaid his retired pay in the amount of \$4,060.88.

As for the member's contention that he effectively cancelled SBP coverage when he submitted his letters and the DD Form 2656, as explained in the appeal decision, SBP coverage for his first wife terminated when they were divorced. This does not change the fact that his second wife was automatically covered under SBP when he failed to decline coverage for her within one year of the date of their marriage.

Finally, the member quotes a frequently asked question (FAQ) and answer concerning the difference between DIC and SBP. We do note that the answer is "Yes," to the question, "Can SBP coverage be terminated because of a service-connected disability rated as total by the Department of Veterans Affairs (VA) and the certainty of Dependency and Indemnity Compensation (DIC) for my spouse being payable by the VA?" However, it is only yes with the consent of the member's spouse. Again, there is no evidence in the record reflecting that the member declined coverage for his second spouse or that his second spouse gave her written consent to his declination of coverage.

Conclusion

The member's request for relief is denied, and we affirm the February 26, 2013, appeal decision. In accordance with DoD Instruction 1340.23 ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

Signed: Jean E. Smallin

Jean E. Smallin
Chairman, Claims Appeals Board

Signed: Catherine M. Engstrom

Catherine M. Engstrom
Member, Claims Appeals Board

Signed: Natalie Lewis Bley

Natalie Lewis Bley
Member, Claims Appeals Board