

DATE: March 13, 2015

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In Re:

[REDACTED]

Claimant

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Claims Case No. 2015-WV-012803.2

**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

When a member retired, he elected Survivor Benefit Plan (SBP) coverage for his spouse. When they later divorced, the divorce decree required the member to continue to elect SBP coverage for his former spouse. Due to an administrative error, the member's request was processed incorrectly, and the coverage was terminated. SBP premiums should have been deducted from his retired pay, but they were not. If the member had died during the period when premiums were not being deducted, his former spouse would have been eligible for an SBP annuity. Since the member received the benefit of SBP coverage, waiver is not appropriate.

**DECISION**

A retired member of the United States Navy requests reconsideration of the February 9, 2015, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2015-WV-012803. In that decision, DOHA denied waiver of a debt to the government in the amount of \$1,206.16 which arose when SBP premiums were not deducted from his retired pay.

**Background**

A member of the United States Navy retired on April 1, 1998. The Defense Finance and Accounting Service (DFAS) advised that the member elected SBP coverage at that time. On August 26, 2013, the member was divorced. The Marital Settlement Agreement which was incorporated into the Judgment of Divorce (hereinafter divorce decree) required that the member elect SBP coverage for his former spouse and that she reimburse him for the coverage. On September 10, 2013, the member completed DD Form 2656-1, *Survivor Benefit Plan (SBP) Election Statement for Former Spouse Coverage*, electing SBP coverage for his former spouse.

Due to an administrative error, the member's request was processed incorrectly, and DFAS terminated SBP coverage for the member's former spouse. As a result, DFAS failed to deduct SBP premiums from the member's retired pay from September 1, 2013, through April 30, 2014, causing an overpayment of \$1,206.16.

In reviewing the member's record, DFAS found that they overpaid his former spouse her portion of his retired pay in November 2013 in the amount of \$363.00. DFAS advised this Office that they credited this amount to the member, thereby reducing his debt to \$863.16 (\$1,206.16 - \$363.00). However, DFAS has requested that we consider the gross amount of the debt; therefore, we have considered \$1,206.16 for waiver.

### **Discussion**

Section 2774 of title 10, United States Code, provides authority for waiving claims for erroneous payments of pay and certain allowances made to or on behalf of members or former members of the uniformed services, if collection of the claim would be against equity and good conscience and not in the best interests of the United States, and if there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the member or former member, or any other person having an interest in obtaining a waiver of the claim. In applying for waiver, an applicant is not disputing his legal obligation to pay an indebtedness, but is arguing that as a matter of equity it would be inappropriate for the government to pursue collection in the circumstances of the case. The fact that a debt occurred as a result of administrative error does not by itself entitle the member to waiver. *See* Department of Defense Instruction 1340.23 (hereinafter Instruction) ¶ E4.1.3. Waiver of a debt which arises due to non-deduction of insurance or SBP premiums is not appropriate if the member received the benefit of the coverage. *See* DOHA Claims Case No. 07022009 (February 28, 2007), and DOHA Claims Case No. 02120406 (December 19, 2002).

The SBP, 10 U.S.C. §§ 1447-1455, is an income maintenance program for survivors of deceased members of the uniformed services. A married member is eligible to participate in SBP when he becomes entitled to retired pay, unless he elects with his spouse's concurrence not to participate before the first day for which he is eligible for that pay. *See* 10 U.S.C. § 1448. The SBP election data requirements are set forth under Chapters 43 of Volume 7B of DoD 7000.14-R, the Department of Defense Financial Management Regulation (DoDFMR), Survivor Benefit Plan—Elections and Election Changes.

In his request for reconsideration, the member makes a number of statements for which he demands an explanation. All of them relate to actions taken or not taken by the DFAS. This includes the member's request under the Freedom of Information Act (FOIA). This Office cannot answer for the actions of another agency; therefore, the member must direct his requests for explanations or records to DFAS. This Office must base its decisions on the written record and has neither the authority nor the staff to perform investigations. If the member had died while premiums were not being deducted, a review of his file would have revealed that his former spouse was entitled to a SBP annuity minus any uncollected premiums. This Office also

notes that Instruction ¶ E4.1.7, does state, “Financial hardship is not a factor for consideration in determining whether a waiver is appropriate.”<sup>1</sup>

By the terms of the divorce decree, the member’s former spouse would continue her right to a SBP annuity, and she would reimburse the member for the monthly cost of the SBP. The member should have known that SBP premiums would continue to be deducted from his pay, and should have questioned when they stopped. Regardless of whether the member knew he was being overpaid or not, the member did properly notify DFAS when the premiums were stopped. This Office has consistently held that waiver is not appropriate under 10 U.S.C. § 2774 for uncollected SBP premiums because it is not inequitable for a member who receives a benefit of coverage to pay for it. *See* DOHA Claims Case No. 2012-WV-100505.2 (March 28, 2013), and DOHA Claims Case No. 2012-WV-072701.2 (October 18, 2012).

The member has provided no new evidence in this case and was provided the benefit of the coverage. Had the member died, the former spouse would have been entitled to a SBP annuity.

### **Conclusion**

The member’s request for reconsideration is denied, and the appeal decision dated February 9, 2015 is affirmed. In accordance with the Instruction ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

*///Original Signed///*

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Jean E. Smallin  
Chairman, Claims Appeals Board

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Gregg A. Cervi  
Member, Claims Appeals Board

*///Original Signed///*

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Natalie Lewis Bley  
Member, Claims Appeals Board

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<sup>1</sup> *See* <http://www.dtic.mil/whs/directives/corres/pdf/134023p.pdf>.