

December 19, 2002

In Re:

[Redacted]

Claimant

Claims Case No. 02120406

CLAIMS APPEALS BOARD DECISION

DIGEST

Because a member elected Survivor Benefit Plan (SBP) coverage for his spouse when he retired, she became his SBP beneficiary and remained so until her death. The member notified the Service of his remarriage, but because he did not decline SBP coverage for his new spouse, she became his SBP beneficiary one year after their marriage. SBP premiums should have been deducted from his retired pay beginning one year after the marriage, but they were not. If the member had died during the four years when premiums were not being deducted, his wife would have become eligible for an SBP annuity. Since the member received the benefit of SBP coverage for those four years, waiver of the unpaid premiums is not appropriate.

DECISION

This is in response to an appeal of Defense Office of Hearings and Appeals (DOHA) Settlement Certificate, DOHA Claim No. 02090906, dated October 22, 2002, wherein our Office denied a member's request for waiver of a \$3,264.49 debt to the government which arose when Survivor Benefit Plan (SBP) premiums were not deducted from his retired pay.

Background

The record shows that the member, a technical sergeant (E-6) in the United States Air Force, retired September 1, 1973. At that time, he elected SBP coverage for his spouse. His spouse died January 19, 1992, and he notified the Defense Finance and Accounting Service's (DFAS) Retired Pay Department to discontinue his SBP deductions on January 27, 1992. The member remarried on October 8, 1996, and because he had previously elected SBP coverage for his former spouse, applicable law required that his SBP coverage be reinstated when his current spouse became an eligible beneficiary on October 8, 1997--one year from the date of his marriage--unless he declined coverage for her. Accordingly, SBP premiums should have been withheld from his retired pay effective November 1, 1997. However, because of an administrative error, DFAS failed to deduct SBP premiums from the member's retired pay during the period November 1, 1997 through October 31, 2001, causing an overpayment to him of \$3,264.49. DFAS discovered the error when they received a letter from the member, dated October 25, 2001, which requested SBP coverage for his new spouse.

Discussion

Under 10 U.S.C. § 2774, this Office may 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, and if there is no 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 does not by itself entitle a member to waiver. *See* DOHA Claims Case No. 98051107 (July 28, 1998) citing B-190565, Mar. 22, 1978.

The SBP, 10 U.S.C. §§ 1447-1460b, is an income maintenance program for the survivors of deceased members of the uniformed services. ⁽¹⁾ If a married member does not decline SBP coverage for his spouse upon retirement, coverage for the spouse is initiated. *See* 10 U.S.C. § 1448(a)(2). If the 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). 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 coverage. *See* DOHA Claims Case No. 98060410 (September 30, 1998) citing 62 Comp. Gen. 608 (1983); B-252123, Aug. 4, 1993; and B-254265, Dec. 20, 1993. Section 1448(a)(6) of title 10 of the United States Code and prior Comptroller General decisions indicate that once a member is an SBP participant, he continues to be considered a participant, even during a period when he has no eligible beneficiary and no premiums are being deducted from his retired pay. When he remarries, therefore, his new spouse becomes a beneficiary unless he formally declines coverage within the first year of marriage. ⁽²⁾ *See* DOHA Claims Case No. 98060410, *supra* citing B-249740, June 4, 1993.

In the case before us, the member states that he notified Retired Pay officials of his remarriage, provided them with a copy of his marriage certificate, applied for a dependent ID card, and registered his new spouse in the DEERS program. It was his October 25, 2001 letter to DFAS requesting belated SBP coverage for his new wife, which led to that agency's discovery of the overpayment. Under applicable law, the member's spouse became his SBP beneficiary one year after they married, because the member did not decline SBP coverage within that year. If the member had died before DFAS began deducting SBP premiums from his retired pay, she would have become eligible for an SBP annuity, although DFAS would have collected the outstanding SBP premiums from her annuity. Because the member thus received the benefit of SBP coverage beginning in October 1997, we deny waiver of premiums due from November 1, 1997 through October 31, 2001. *See* DOHA Claims Case 98060410, *supra*.

Conclusion

We affirm the Settlement Certificate.

_____/s/_____
 Michael D. Hipple
 Chairman, Claims Appeals Board

_____/s/_____
 William S. Fields
 Member, Claims Appeals Board

_____/s/_____
 Jean E. Smallin
 Member, Claims Appeals Board

1. The statute which established SBP, Pub. L. No. 92-425, 86 Stat. 706, was enacted in 1972.
2. Just as the concurrence of his spouse is required under 10 U.S.C. § 1448(a)(3) when a member declines coverage at retirement, spousal concurrence is required under 10 U.S.C.

§ 1448(a)(6).