

KEYWORDS: General; waiver of indebtedness; Reserve Component Survivor Benefit Plan (RCSBP)

DIGEST: A retired member elected participation in the Reserve Component Survivor Benefit Plan (RCSBP) along with the additional 20% supplemental RCSBP coverage to prevent his spouse's annuity from being reduced when she became eligible for social security benefits. However, deductions from his retired pay for the 20% supplemental RCSBP coverage were not made for three years. The member noticed the error when he received his first retired pay account statement and alerted an official of the Defense Finance and Accounting Service (DFAS). Although he was subsequently given incorrect information, it is not against equity and good conscience to deny waiver of the repayment of the unpaid premiums since the member received the benefit of supplemental RCSBP coverage for those three years. If the member had died within the three years when premiums were not being deducted for the supplemental RCSBP coverage, his widow would have received the RCSBP annuity with the additional 20% supplemental coverage (minus the amount of the uncollected premiums).

CASENO: 05051207

DATE: 6/17/2005

DATE: June 16, 2005

In Re:

[Redacted]

Claimant

Claims Case No. 05051207

CLAIMS APPEALS BOARD DECISION

DIGEST

A retired member elected participation in the Reserve Component Survivor Benefit Plan (RCSBP) along with the additional 20% supplemental RCSBP coverage to prevent his spouse's annuity from being reduced when she became eligible for social security benefits. However, deductions from his retired pay for the 20% supplemental RCSBP coverage were not made for three years. The member noticed the error when he received his first retired pay account statement and alerted an official of the Defense Finance and Accounting Service (DFAS). Although he was subsequently given incorrect information, it is not against equity and good conscience to deny waiver of the repayment

of the unpaid premiums since the member received the benefit of supplemental RCSBP coverage for those three years. If the member had died within the three years when premiums were not being deducted for the supplemental RCSBP coverage, his widow would have received the RCSBP annuity with the additional 20% supplemental coverage (minus the amount of the uncollected premiums).

DECISION

This is in response to an appeal of Defense Office of Hearings and Appeals (DOHA) Settlement Certificate 04111524, dated November 24, 2004, which denied a retired Army member's request for waiver in the amount of \$5,722.72. The member's debt arose when the Defense Finance and Accounting Service (DFAS) failed to deduct the additional 20% supplemental Reserve Component Survivor Benefit Plan (RCSBP) coverage premiums from his retired pay.

Background

On October 1, 2000, the member completed a DD Form 2656 (Data for Payment of Retired Personnel) applying for military retired pay. At that time, he elected RCSBP coverage for his wife at full gross pay (the base annuity amount equal to full retired pay) plus supplemental coverage of 20%. The supplemental coverage elected by the member prevented his wife's annuity from being reduced when she became eligible for social security benefits. Without the supplemental coverage, the member's wife would only receive 35% of the base annuity amount. With the supplemental coverage the member's wife was entitled to the 55% of the base annuity amount. On July 8, 2001, the member turned sixty years old and became eligible to receive military retired pay. Due to an administrative error, DFAS failed to deduct the additional premiums for the 20% supplemental RCSBP coverage from the member's retired pay during the period July 8, 2001, through July 31, 2004. The member became indebted for the premiums in the amount of \$5,722.72.

The member argues that the debt should be waived because he states that he did not know that he was being overpaid. He states that the information he was given by a DFAS official (that if he died, his spouse would only be entitled to the 35% of the base annuity amount) led him to believe that he was not being overpaid.

Discussion

Under 10 U.S.C. § 2774, we have the authority to waive claims of the United States against 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. The fact that the debt occurred as a result of administrative error does not by itself entitle a member to waiver. *See* DOHA Claims Case No. 02120406 (December 19, 2002).

Once a member has made the election to participate in the RCSBP, participation is irrevocable and cannot be waived by the member. *See* 10 U.S.C. § 1448(a)(4)(B). Where the required deductions to cover the cost of the annuity are not made from a member's retired pay, the uncollected premiums are collected from the survivor's annuity. In this case, if the member had died before DFAS deducted the premiums for the additional coverage, the member's spouse would have been eligible to receive the maximum annuity, 55% of the base annuity. Even though due to an administrative error deductions were not made from the member's retired pay, the member benefitted from continued participation in the program. Under analogous circumstances, we have held that it is not against equity and good conscience to require a member to pay for benefit received or protection provided. *See* DOHA Claims Case No. 98060410 (September 30, 1998); DOHA Claims Case No. 02120406, *supra*; B-254265, Dec. 20, 1993; and B-251519, ar. 18, 1993.

Conclusion

We affirm the Settlement Certificate.

/s/

Michael D. Hipple
Chairman, Claims Appeals Board

/s/

Jean E. Smallin
Member, Claims Appeals Board

/s/

Catherine M. Engstrom
Member, Claims Appeals Board