

DATE: February 28, 2007

In Re:

[REDACTED]

Claimant

)

Claims Case No. 07022009

CLAIMS APPEALS BOARD
RECONSIDERATION DECISION

DIGEST

When the member retired, he was not married. He subsequently married and filed an application within one year of his marriage for enrollment in the Survivor's Benefit Plan (SBP) for his new spouse. SBP premiums should have then 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 wife would have become 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 Army requests reconsideration of the January 30, 2007, decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 07011604. In that decision, DOHA denied the member's application for a waiver of an indebtedness of \$9,605.84 that he incurred when Survivor's Benefit Plan (SBP) premiums were not withheld from his retired pay.

Background

The record shows that the member retired from the United States Army on July 19, 2000. The member was entitled to receive retired pay. Since he was not married, no SBP election was posted to his retirement account. On May 3, 2002, the member was married. He requested SBP coverage for his spouse. As a result, SBP premiums should have been withheld from his retired pay effective June 1, 2003. Due to an administrative error, no SBP premiums were withheld from his account. As a result, the member was overpaid \$9,605.84 from June 1, 2003, through July 30, 2006.

Our Office determined that it would not be against equity and good conscience to collect the overpayment from the member since the member's spouse would have been covered under SBP had he died during the period that no SBP premiums were deducted from his retired pay. In his request for reconsideration, the member attempts to distinguish his situation from the Comptroller General decision, B-253900, Nov. 4, 1993. He states that unlike the facts in

B-253900, there was no documentation of eligibility for SBP coverage in his case. He states that despite his timely filing of the SBP application, he was repeatedly denied coverage based on the fact that it was not open season. Therefore, the member argues that the debt should be waived because he is not convinced that his spouse would have been protected or even known to inquire about SBP coverage had he died.

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, 2003).

The SBP, 10 U.S.C. §§ 1447-1460b, is an income maintenance program for survivors of deceased members of the Uniformed Services. A member who is not married upon becoming eligible to participate in SBP but who later marries may elect to participate in SBP. *See* 10 U.S.C. § 1448(a)(5)(A). The member's election must be in writing and received by the Secretary concerned within one year after the date on which that person marries. *See* 10 U.S.C. 1448(a)(5)(B). Waiver of a debt resulting from the non-deduction of SBP premiums may not be waived if the member received the benefit of coverage. *See* DOHA Claims Case No. 02120406, *supra*, and DOHA Claims Case No. 98060410 (September 30, 1998).

After the member married in May 2002 he requested SBP enrollment for his spouse by notifying the Defense Finance and Accounting Service (DFAS) within one year from the date of his marriage. The record reflects that the member filled out a form entitled "Designation of Beneficiary Form Information," in which he listed his new spouse as having a 100% share in his retired pay. Although the member may have been told that he had to wait until open season to enroll his spouse in SBP, DFAS indicates that coverage for his spouse under SBP became effective on June 1, 2003. If the member had died during the period the premiums were not being deducted, June 1, 2003, through July 30, 2006, his wife would have become eligible for an SBP annuity due to the Designation in the member's file (the premiums would have been deducted from her annuity). Since the member received the benefit of SBP coverage during this period, waiver of the unpaid premiums is not appropriate. *See* DOHA Claims Case No. 02120406, *supra*.

In the member's request for reconsideration he attempts to distinguish his case from the Comptroller General's decision in B-253900. He states that his claim is unique because his case involves an "eligibility issue." However, we find the member's case analogous to the Comptroller General's decision in B-253900. In B-253900, the member indicated that he wished to enroll in SBP and submitted the necessary election forms and selected full spouse coverage. Due to an administrative error, he was not entered into the SBP program and premiums were not deducted from his retired pay. The Comptroller General found that the member was liable for the costs of the premiums since spousal coverage under SBP did exist. In the present case, the record reflects the member filed an SBP application within one year from the date of his marriage, but due to administrative error, he was not entered into the SBP program and premiums were not deducted from his retired pay. However, coverage for his spouse was effective on June 1, 2003.

Conclusion

The member's request for relief is denied, and we affirm the January 30, 2007, decision to deny waiver in the amount of \$9,605.84. In accordance with Department of Defense Instruction 1340.23, ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

Signed: Michael D. Hipple

Michael D. Hipple

Chairman, Claims Appeals Board

Signed: Jean E. Smallin

Jean E. Smallin

Member, Claims Appeals Board

Signed: Catherine M. Engstrom

Catherine M. Engstrom

Member, Claims Appeals Board