

KEYWORDS: waiver of indebtedness; SBP

DIGEST: When a member retired, he elected Survivor Benefit Plan (SBP) coverage for his spouse. The member divorced and subsequently remarried. Under the 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. 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.

CASENO: 08032002

DATE: 3/21/2008

DATE: March 21, 2008

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In Re:)	
[REDACTED])	
)	Claims Case No.08032002
)	
Claimant)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

When a member retired, he elected Survivor Benefit Plan (SBP) coverage for his spouse. The member divorced and subsequently remarried. Under the 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. 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 February 26, 2008, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 07121708. 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 \$15,528.66.

Background

The member retired from the United States Army on November 1, 1972. The member was entitled to receive retired pay. He elected Survivor Benefit Plan (SBP) coverage for his spouse. The member divorced. On November 24, 1989, 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 December 1, 1990. Due to an administrative error, no SBP premiums were withheld from his account. As a result, the member was overpaid \$15,528.66 from December 1, 1990, through February 28, 2007.

Our Office determined 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 when no SBP premiums were deducted from his retired pay.

In his reconsideration request, the member states that the claim arose from an administrative error. He indicates that he had no knowledge that his spouse had SBP coverage and that this is evidenced by the fact he sought enrollment for her during the 2007 Open Season for SBP Benefits. He also indicates that collection of the debt would cause him financial hardship.

Discussion

Under 10 U.S.C. § 2774, we have the authority 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 an erroneous payment is solely a result of administrative error or mistake on the part of the government is not a sufficient basis in and of itself for granting a waiver. *See* DoD Instruction 1340.23 (Instruction) ¶ E4.1.3, and DOHA Claims Case No. 07030508 (March 13, 2007). Financial hardship is not a factor for consideration in determining whether a waiver is appropriate. *See* ¶ E4.1.7 of the Instruction.

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 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 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. 07030508, *supra*; DOHA Claims Case No. 07022009 (February 28, 2007); and DOHA Claims Case No. 02120406 (December 19, 2002).

In the case before us, when the member retired, his spouse was covered under SBP. Her coverage ceased upon his divorce. When the member remarried in 1989, his wife automatically became his SBP beneficiary one year after their marriage since he did not decline coverage for her. If the member had died during the period the premiums were not being deducted, December 1, 1990, through February 28, 2007, his wife would have been entitled to an SBP annuity, although the unpaid premiums would have been deducted from her annuity. Even if we accept the member's contention that he did not realize his spouse had SBP coverage, waiver of the unpaid premiums is not appropriate because he received the benefit of the coverage during this period.

Conclusion

The member's request for relief is denied, and we affirm February 26, 2008, 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: 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