

DECISION

A retired member of the United States Marine Corps requests reconsideration of the April 23, 2008, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 08030501. In that decision, DOHA waived \$1.68 of the government's claim and denied waiver of \$4,882.87.

Background

The member retired from the United States Marine Corps on May 31, 1999. He elected Survivor Benefit Plan (SBP) coverage for his wife and children, which became effective June 1, 1999. Due to an administrative error, his SBP premiums were under-deducted from his retired pay from June 1, 1999, through November 30, 2001, causing an overpayment of \$1.68. Our Office waived the overpayment in the amount of \$1.68, and it is not at issue in this reconsideration request.

The member's SBP premiums were correctly deducted from his retired pay from December 1, 2001, through May 31, 2002. On May 29, 2002, the member and his wife elected to discontinue participation in SBP. On June 25, 2002, the member and his wife requested withdrawal of their request to discontinue participation. SBP coverage was effective on June 1, 2002. However, due to an administrative error, SBP premiums failed to be deducted from his retired pay during the period June 1, 2002, through October 31, 2007, causing an overpayment of \$4,882.87. Our Office determined that it would not be against equity and good conscience to collect the overpayment in the amount of \$4,882.87 from the member since the member received the benefit of the coverage.

In his request for reconsideration, the member argues that the debt should be waived because he is not convinced that he had SBP coverage effective June 1, 2002. His Retiree Account Statements reflected, "discontinued participation." He states that there was no way he would have known he was being overpaid because even the Defense Finance and Accounting Service (DFAS) made a mistake in calculating the amount properly. In addition, he states that he acted in good faith by contacting DFAS on December 23, 2002, April 25, 2003, and July 25, 2003, regarding the error.

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, 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 the member to waiver. *See* DoD Instruction 1340.23 (Instruction) ¶ E4.1.3.

The SBP, 10 U.S.C. §§ 1447-1460b, is an income maintenance program for survivors of deceased members of the uniformed services. A member may elect to discontinue participation in SBP during the 25th through the 36th month after commencement of payment of retired pay. *See* 10 U.S.C. § 1448a. This election is effective as of the first day of the first calendar month following the month in which the election is received by the Secretary concerned. *See* 10 U.S.C. §1448a(g). A person may withdraw the request to discontinue participation within 30 days after submitting it to the Secretary concerned. *See* 10 U.S.C. § 1448a(d). 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).

In the case before us, the member retired on May 31, 1999, and his wife and children were covered under SBP effective June 1, 1999. On May 29, 2002, the member and his wife elected to discontinue participation in SBP. However, on June 25, 2002, the member and his wife requested withdrawal of their request to discontinue participation. Under 1448a(d), SBP coverage was effectively reinstated on June 1, 2002, because the member and his wife withdrew their request to discontinue participation within 30 days. If the member had died during the period the premiums were not being deducted, June 1, 2002, through October 31, 2007, his wife and children would have become eligible for an SBP annuity, although DFAS would have deducted the outstanding premiums from the annuity. Since the member received the benefit of the SBP coverage during this period, waiver of the unpaid premiums is not appropriate. *See* DOHA Claims Case No. 07022009, *supra*, and DOHA Claims Case No. 02120406, *supra*.

Conclusion

The member's request for relief is denied, and we affirm the April 23, 2008, decision to deny waiver in the amount of \$4,882.87. 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: Jean E. Smallin

Jean E. Smallin
Acting Chairman, Claims Appeals Board

Signed: William S. Fields

William S. Fields
Member, Claims Appeals Board

Signed: Catherine M. Engstrom

Catherine M. Engstrom
Member, Claims Appeals Board