

DATE: September 17, 1996

In Re:

[Redacted]

Claimant

Claims Case No. 96070225

CLAIMS APPEALS BOARD DECISION

DIGEST

A widow was given erroneous information regarding her eligibility for a Reserve Component Survivor Benefit Plan (SBP) Annuity at the time of the member's death. Based on the information that she was ineligible for an annuity until she reached age 60, the widow did not file a claim for SBP Annuity until almost eight years after the member's death. In view of the bar against similar SBP claims by the United States Court of Appeals and the General Accounting Office, we find no legal basis upon which this claim may be paid, thus it is barred under 31 U.S.C. 3702 (b).

DECISION

[Redacted], appeals the United States General Accounting Office's (GAO) Settlement Certificate Z-2870021, dated June 4, 1996, which denied her claim for an annuity under the Reserve Component Survivor Benefit Plan (RC-SBP) established for her by her late husband, a Sergeant who retired from the Army National Guard in 1984. Pursuant to Public Law No. 104-53, November 19, 1995, effective June 30, 1996, the authority of GAO to adjudicate claims such as this one was transferred to the Director, Office of Management and Budget, who delegated this authority to the Department of Defense.

Background

The retired member and his wife were married on February 9, 1959, in Mississippi. The member was a Sergeant First Class with the Mississippi Army National Guard. On September 9, 1979, the member elected RC-SBP, spouse only coverage under Option C (see below), an immediate annuity to be paid to his spouse, regardless of his age at the time of his death. The member retired on April 17, 1984, after 28 years of service.

The member died in a traffic accident on June 5, 1987, at the age of 47. Shortly after his death, his nephew made inquiries on behalf of the claimant. The nephew states that he was informed that the claimant would not be eligible to receive SBP benefits until she reached age 62. The file contains a statement from the unit clerk who acknowledges that he gave incorrect information to the claimant regarding her SBP benefit. Due to his inexperience at the time of her initial inquiry, he states that he told the claimant that she could not receive benefits until she reached 60 years of age. The unit clerk states that the claimant gave him a copy of the member's death certificate and that he placed it in the unit's historical file. Based on the erroneous information, the claimant did not immediately pursue her claim for benefits.

On May 26, 1995, the claimant filed a written claim for the RC-SBP annuity. Since the claim was filed more than six years after the member's death, it was denied. The claim was then submitted to GAO. In a Settlement Certificate, dated June 4, 1996, GAO denied the claim, finding that the claim was barred by the statute of limitation. The settlement certificate noted that while the claimant's actions were based on erroneous information provided by a clerk, it is a well established rule that the Government is not bound by the erroneous advice or actions of its officers, employees or agents, even if given or made in the course of their official duties. The claimant appealed, and the matter was then forwarded to this Office.

Discussion

The SBP program was established in 1972 to provide income maintenance for surviving dependents of deceased members of the uniformed services. See, generally, Pub. L. No. 92-425, 86 Stat. 706 (1972), as amended by Title II of Public Law 95-397. Reservists qualified for retired pay but not yet eligible to receive it due to age became entitled to elect immediate coverage for their dependents. See, Pub. L. No. 95-397, 202, 92 Stat. 843, 844 (1978). A member of the reserves is provided with three basic options when he completes the years of service required for eligibility for reserve-component retired pay.

As described in the member's election document, the member could have: (A) declined participation in SBP but remained eligible to make an election for coverage at age 60; (B) elected to provide an annuity beginning on the date of his 60th birthday should he die before that date or to provide an annuity on the day after the date of his death if he should die on or after his 60th birthday, or; (C) elected immediate participation, which would provide a spouse with an annuity upon the death of the member whether he died before or after reaching age 60.

The member in this case chose to provide an immediate annuity for his spouse. The election form, signed by the member and the claimant is in the record. Had the claimant pursued her claim at the time of the member's death, she presumably would have begun receiving an

immediate annuity. The issue raised in this case is whether the claim may now be paid, eight years after the claim arose.

Formerly, the General Accounting Office and the courts held that a claim for an SBP annuity accrued continuously from month to month, arising each time a payment was due to the claimant. However, in Hart v. United States, 910 F.2d. 815 (Fed. Cir. 1990), the United States Court of Appeals reversed the Claims Court and found that a widow's claim for an SBP annuity was not a continuing claim on the first day of each month and thus, was not a continuing claim.⁽¹⁾ The Court of Appeals found that a claim which had been filed more than six years after the member's death, was barred by the statute of limitation imposed by 28 U.S.C. 2501. The Court found that all of the events fixing the government's liability for SBP benefits had occurred at the member's death, and therefore, Mrs. Hart had to claim the benefits within 6 years or be forever barred from doing so.

Under 31 U.S.C. 3702 (b), also referred to as the Barring Act, the administrative statute of limitation, like the Claims Court's statute of limitation, limits jurisdiction to consider claims to those that are filed within 6 years after they arise. GAO generally followed the decisions of the federal courts in administrative settlements of claims where the issues were fully considered by the courts. Thus, in Application of the Barring Act to Annuity Claims, 71 Comp. Gen. 398 (1992), the Comptroller General followed Hart and disallowed similar claims.

In the present case, the member died on June 5, 1987. At that time, all of the events arose which fixed the liability of the government and entitled the claimant to make a claim. Although the claimant made inquiries, no claim was filed, and the filing of the claim was unfortunately delayed as a result of erroneous advice. In 1995, the claimant filed her claim, approximately 8 years after it arose. Thus we must decide whether the claim may now be paid.

This claim, as in Hart and the Application of the Barring Act, cited above, deals with an SBP annuity. Our jurisdiction to decide cases such as this is derived from 31 U. S. C. 3702, the same authority which previously provided authority to the Comptroller General to decide such claims. The transfer of authority provided no authority to waive or make exceptions to the

statute of limitations.

Thus, while we recognize that the claimant was given erroneous information which creates a harsh result with regard to her claim, we find no authority which would allow us to disregard the decisions of the United States Court of Appeals, or the decisions of the Comptroller General, and allow the claim under these circumstances.

Conclusion

Accordingly, we deny the claim.

_____/s/ _____ Joyce N. Maguire

Member, Claims Appeals Board

_____/s/_____

Michael D. Hipple

Chairman, Claims Appeals Board

_____/s/_____

Christine M. Kopocis

Member, Claims Appeals Board

1. The Claims Court is now the United States Court of Federal Claims.