

DATE: March 11, 1997

In Re:

[Redacted]

Claimant

Claims Case No. 96101002

CLAIMS APPEALS BOARD DECISION

DIGEST

The widow of a military retiree applied for a Survivor Benefit Plan (SBP) annuity in January 1988, shortly after her husband's death, and the Defense Finance and Accounting Service (DFAS) established an SBP annuity for her. The Department of Veterans Affairs also awarded her Dependency and Indemnity Compensation (DIC) in 1988. The SBP annuity was reduced by the amount of DIC to which she was entitled. In 1996 DFAS discovered that she had not received the partial refund of SBP premiums to which she became entitled when DIC was awarded in 1988. Her claim is not barred by the Barring Act, 31 U.S.C. 3702(b), since her claim for the SBP annuity constituted a claim for the partial refund. The claim was filed in a timely manner according to GAO regulations issued in 1989.

DECISION

We have been asked to render a decision regarding the claim of the widow of a retired military member for partial refund of premiums paid by the member for a Survivor Benefit Plan (SBP) annuity of which she is the beneficiary. The Defense Finance and Accounting Service (DFAS) originally submitted the claim to the General Accounting Office (GAO) for a determination as to whether the claim was barred by the Barring Act, 31 U.S.C. 3702(b). The claim was transferred to this Office without action pursuant to Public Law No. 104-316, October 19, 1996. Title 31 of the United States Code, Section 3702, which provides for the settlement of claims against the United States, was amended by that law to provide that the Secretary of Defense shall settle claims involving uniformed service members' pay, allowances, travel, transportation, retired pay, and survivor's benefits. The Secretary further delegated that authority to this Office.

Background

A member retired from the United States Army in 1966 and elected full SBP coverage for his spouse in 1972. She became entitled to an SBP annuity of \$903 per month when he died on December 11, 1987. On January 4, 1988, she completed an Application for Annuity under the Retired Serviceman's Family Protection Plan (RSFPP) and/or Survivor Benefit Plan (SBP), DD Form 1884, to apply for the annuity at Fort Sam Houston, Texas; and the annuity was established by DFAS's Indianapolis Center in February 1988. In May 1988, DFAS learned that the Department of Veterans Affairs (VA) had awarded the widow \$707 per month in Dependency and Indemnity Compensation (DIC) effective January 1, 1988. The amount of the SBP annuity a widow receives must be reduced by the amount of her DIC, and because of the delay in initiation of the offset, DFAS determined that the widow had been overpaid \$2,828. On Form 20-74A dated August 10, 1988, DFAS requested payment of that amount from VA. A note on the back of this form said "refund to widow is pending." DFAS initiated collection of the overpayment from the widow in October 1988 by reducing her annuity payment by \$29 per month. Between October 1988 and December 1995, \$2,383 was collected from the widow. In November 1995, VA informed DFAS that VA records indicated that VA had collected the \$2,828 from the widow when her DIC payments began. Due to an administrative error, DFAS did not credit the widow with VA's collection.

The widow's records were transferred to DFAS's Denver Center in 1993. DFAS performed an audit on her records in January 1996. Thereafter, the \$2,383 erroneously collected from her was refunded. The audit also revealed that she had not received the partial refund of SBP premiums (amounting to approximately \$15,093.70) to which she became entitled when she was awarded DIC. DFAS questions whether the Barring Act now bars refund of the SBP premiums, since

more than 6 years have elapsed since the widow was awarded DIC.

Discussion

The SBP, 10 U.S.C. 1447-1460b, was established by Congress as an income maintenance program for dependents of deceased members of the uniformed services. If the SBP beneficiary is entitled to DIC upon the death of the member, the SBP annuity must be reduced by the amount of the DIC. See 10 U.S.C. 1450(c). A beneficiary who is thus receiving a reduced SBP annuity is entitled to a refund of a comparable portion of the SBP premiums which the member paid for SBP coverage. See 10 U.S.C 1450(e). A beneficiary becomes entitled to SBP immediately upon the death of the member, while DIC entitlement does not begin until the first day of the month after the member dies. In Master Sergeant William B. Farmer, USAF, 63 Comp. Gen. 536, 539 (1984), GAO stated that the time discrepancy does not prevent the beneficiary from receiving a refund of SBP premiums.

For partial refund of the SBP premiums to be proper in this case, the record must first indicate that the widow filed a claim for the refund within 6 years of the award of DIC. While the DD Form 1884 on which the widow claimed SBP has been lost, it is clear that she filed a claim for it shortly after her husband's death. Personnel at Fort Sam Houston, where she filed the claim, indicate that she filled out the claim form completely. Part of DD Form 1884 is an affidavit by which a beneficiary affirms her understanding that her SBP annuity will be reduced by the amount of DIC which she is awarded. Contained in the affidavit is a statement that if her SBP annuity is reduced due to receipt of DIC, a comparable portion of the SBP premiums will be refunded. It is our view that the DD Form 1884 which the claimant filled out constitutes a claim for the portion of SBP premiums to which she became entitled when she was awarded DIC. See 63 Comp. Gen. at 539. In addition, it is likely that the "refund to widow is pending" notation on Form 20-74A dated August 10, 1988, refers to the partial refund of SBP premiums, since the monthly collection of \$29 from her annuity had not yet been initiated.

Prior to June 15, 1989, only filing with the GAO stopped the running of the statute of limitations established by the Barring Act. After that date, filing with the agency involved or with GAO stopped the running of the statute of limitations. For purposes of the transition period, claims filed with the proper agency after June 15, 1983, were considered timely. See B-198713.4, Dec. 11, 1989. It is our view that the widow in the present situation filed a timely claim for partial refund of SBP premiums. Accordingly, her claim is not barred.

Conclusion

The claim for partial refund of SBP premiums may therefore be paid if otherwise correct.

/s/

Michael D. Hipple

Chairman, Claims Appeals Board

/s/

Christine M. Kopocis

Member, Claims Appeals Board

/s/

Jean E. Smallin

Member, Claims Appeals Board