

April 22, 1997

In Re:

[Redacted]

Claimant

Claims Case No. 96110703

CLAIMS APPEALS BOARD DECISION

DIGEST

A retired Air Force member was under court order to provide a Survivor Benefit Plan (SBP) annuity for his former spouse. He attempted to do so, but the election form he submitted lacked her signature. Due to apparent administrative error, the member's second wife (now his widow) was established as his SBP beneficiary and began receiving an SBP annuity upon his death. When the member's former spouse filed a claim for an SBP annuity with the Comptroller General, the Comptroller General pointed out the administrative errors and referred the matter to the Secretary of the Air Force for correction under 10 U.S.C. 1454. The Secretary established the former spouse as the proper beneficiary and waived collection under 10 U.S.C. 1453 of amounts already paid to the widow. Review indicates that the Comptroller General's decision is without error, and the widow's claim for reinstatement of an SBP annuity is denied.

DECISION

This is in response to a claim for reinstatement of a Survivor Benefit Plan (SBP) annuity by the widow of a retired Air Force member. Based on the member's service, the widow received an SBP annuity from his death in December 1994 through August 31, 1996. Following the issuance of Comptroller General decision B-270502, May 24, 1996, the Air Force determined that the member's former spouse, rather than his widow, was entitled to the SBP annuity.⁽¹⁾ The widow requested that the Comptroller General reconsider decision B-270502 and reinstate her SBP annuity. She objected to the procedures used by the Comptroller General to reach his decision. Her claim was transferred to this Office without action pursuant to Public Law No. 104-316, October 19, 1996. Section 3702 of title 31 of the United States Code, 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.⁽²⁾

Background

According to the record before us,⁽³⁾ the member and his former spouse were married in 1945. In 1973 he retired from the Air Force and elected SBP coverage for her as his spouse. They were divorced on January 2, 1988. As part of the property settlement agreement they executed in October 1987 in anticipation of the divorce, she was to receive one half of the community amount of his Air Force retired pay, and she was to continue to be maintained as his beneficiary under the SBP, for which they agreed to bear the cost jointly. This property settlement was incorporated into the divorce decree.

On January 16, 1988, the member remarried. In December 1988, he submitted the proper form to the Air Force Accounting and Finance Center to elect former spouse coverage under the SBP in accordance with the divorce decree. This was necessary because his former spouse no longer qualified for SBP spouse coverage. On the form the member submitted, he listed his former spouse as his beneficiary and checked the block indicating that the election was being made pursuant to a court order. However, the space provided for the former spouse's signature was left blank. The form was accepted by the Air Force and retained on file, apparently without any official notification to either the member or his former spouse that the required signature of the former spouse had not been provided.

In May 1989, the member wrote to the finance center to elect SBP coverage for his second wife. He explained that he

had elected coverage in 1973, but had remarried in 1988. He stated that it was his understanding that his wife would have "the same SBP as my ex-wife." It is unclear whether he believed that his wife would receive full SBP benefits instead of his former spouse or that the two women would share the benefits.⁽⁴⁾ Because the former spouse's signature was missing from the earlier form, the Air Force accepted the member's election of his wife as of the first anniversary of their marriage in spite of the statement on the earlier election form that he was electing his former spouse pursuant to a court order.

Upon the member's death, an SBP annuity was established for his widow. His former spouse claimed the annuity. She submitted to the Comptroller General a note she received from the member and a letter she received from his attorney assuring her that she continued to be the member's SBP beneficiary. She also pointed out that she made several calls to Finance officials. They also told her that she was the designated beneficiary and never informed her of any deficiency on the election form. She provided a copy of the court order which required the member to maintain her as his SBP beneficiary, and her lawyer stated that a copy of the order was properly served on the Air Force. Because of the administrative errors which had occurred, the Comptroller General stated that the Air Force should consider correction of its records to make the member's former spouse his SBP beneficiary.

Discussion

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 coverage for a former spouse. 10 U.S.C. 1448(b)(3). Because the awarding of survivor benefits may affect the negotiations over the disposition of other marital assets, Congress determined that a former spouse should be able to rely on and enforce an award of survivor benefits to her by a divorce court by means of a "deemed election." 10 U.S.C. 1450(f)(3); 66 Comp. Gen. 687, 691 (1987). When a member elects former spouse coverage, he must provide the Secretary concerned with a written statement setting forth whether the election is being made pursuant to a court order or to an agreement incorporated in, ratified, or approved by court order. 10 U.S.C. 1448(b)(5). If so, the election may not be changed unless the member provides a proper court order modifying any prior court orders so as to allow the change requested. 10 U.S.C. 1450(f)(2).

The Comptroller General noted that in the present situation the member's former spouse was covered under the SBP as his spouse beneficiary from the time he retired until their divorce in January 1988. In their property settlement, as incorporated in the divorce decree, he agreed to provide an SBP annuity for her; and he and his attorney assured her that she remained his SBP beneficiary. In October 1988, the Air Force was served with a copy of the court order under which the member was required to elect SBP coverage for his former spouse, and in December 1988 he submitted the election form which indicated that he was electing her pursuant to a court order. At that point the Air Force should have contacted the member and his former spouse and informed them that her signature was required on the election form, or she should have been notified so that she could request a "deemed election" under 10 U.S.C. 1450(f)(3). Neither of those actions were taken. Instead, the Air Force accepted the election form and advised the former spouse that she was the member's SBP beneficiary. There appears to be no doubt that she would have signed the election form if she had been requested to do so.⁽⁵⁾

The Comptroller General next considered the member's attempt to elect coverage for his widow, noting that the Air Force should have sought clarification of the member's intent. It was the view of the Comptroller General that the member understood that he was under court order to provide SBP coverage for his former spouse and clearly intended to do so when he filed the election for her in December 1988. Because the Air Force was aware that the member was under court order to provide coverage for his former spouse, the Air Force should not have changed the member's beneficiary without questioning his right to make such a change.

Under those circumstances, the Comptroller General referred the former spouse's claim to the Secretary of the Air Force for consideration under 10 U.S.C. 1454 to correct the administrative errors which had been committed. The Air Force thereafter corrected its record to establish the member's former spouse as his SBP beneficiary. Collection of the \$61,071.20 his widow had already received was waived under 10 U.S.C. 1453.

This Office has reviewed the Comptroller General's decision and the widow's claim for reinstatement of the SBP annuity. The Comptroller General properly rendered his decision in accordance with 4 C.F.R. Part 31.⁽⁶⁾ We find no

error of fact or law in the Comptroller General's decision.

Conclusion

Accordingly, we deny the member's widow's claim for reinstatement of an SBP annuity.

_____/s/_____

Christine M. Kopocis

Member, Claims Appeals Board

_____/s/_____

Joyce N. Maguire

Member, Claims Appeals Board

_____/s/_____

Jean E. Smallin

Member, Claims Appeals Board

1. The Comptroller General noted that his decision rendered the amounts already paid to the widow erroneous and that he would concur with waiver of those amounts under 10 U.S.C.

1453. Thereupon, the Air Force waived collection of the \$61,071.20 in SBP annuity payments which the widow had received.

2. Additionally, effective October 19, 1996, Public Law 104-316 gave the Secretaries of the Services the authority to waive claims of the United States arising out of erroneous payments of SBP annuities without the concurrence of the Comptroller General.

3. The General Accounting Office received an administrative report from the Defense Finance and Accounting Service when the member's former spouse claimed the SBP annuity.

4. There is no provision in the SBP law for division of SBP benefits in this situation.

5. In 1994 the services adopted a policy (previously followed by some services) to accept former spouse elections that have not been signed by the former spouse, and then attempt to notify the former spouse of the terms of the election. If no response is received from the former spouse within a reasonable time, the former spouse is then notified that the terms of the election have become final. While in the present case the Air Force accepted the form, it did not follow the notification provisions of the present policy, which presumably would have led to a prompt resolution of the lack of the former spouse's signature.

6. We note that the decision to change the beneficiary of the annuity was actually made by the Air Force.