

November 26, 1997

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In Re:

[Redacted]

Claimant

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Claims Case No. 97092914

## CLAIMS APPEALS BOARD DECISION

### DIGEST

An Air Force reservist elected Survivor Benefit Plan coverage for his spouse in 1981, but premium deductions were not initiated for spouse coverage when he began receiving retired pay in April 1991, although deductions were made for coverage he had received for his children. In 1993, the member received a form which alerted him to the fact that deductions were not being made for his spouse. In 1995, the Board for Correction of Air Force Records corrected his records to indicate that he elected spouse coverage in 1991. Collection of the retroactive premiums was waived for the period from April 1991 until he was alerted in 1993. Waiver of collection of the premiums for subsequent months is not possible because the member was aware that he was being overpaid by the amount of the premiums.

### DECISION

This is in response to an appeal of Settlement Certificate, DOHA Claim No. 97062624, July 17, 1997, which denied in part a member's request for waiver of a debt which arose when Survivor Benefit Plan (SBP) premiums were not deducted from his retired pay.

### Background

In April 1979, the member elected Reserve Component SBP children-only coverage. When he remarried in 1981, his children were no longer eligible beneficiaries due to age, but he indicates that he elected spouse-only coverage at that time. The Defense Finance and Accounting Service (DFAS) apparently had no record of that election. The member retired from the Air Force Reserve effective April 1, 1991, and DFAS began deducting a small premium from his retired pay for the coverage his children had received. In November 1993, the member received a form from DFAS which indicated that he had not elected coverage for his spouse. In June 1995, he submitted an application to the Board for Correction of Air Force Records (Correction Board) to correct his records to indicate that he had elected coverage for his spouse. The Board acted in September 1996 to correct his record to show an SBP election date of April 1, 1991. Thus, the member was indebted in the amount of \$2,673.12 for the premiums which had not been deducted from his retired pay between April 1, 1991, and September 30, 1996. Because he was not aware until November 1993 that DFAS was not making SBP premium deductions for his spouse, DFAS recommended waiver of \$1,266.96 that should have been deducted for premiums between April 1991 and November 1993. DFAS recommended denial of waiver of \$1,406.16 for premiums that should have been deducted between December 1993 and the initiation of regular monthly deductions in October 1996. In the Settlement Certificate, our Office followed DFAS's recommendations. The member argues that he should not have to pay any of the premiums because his spouse was not covered by SBP during the period in question.

### Discussion

Under 10 U.S.C. § 2774, we may waive collection of erroneous overpayments of pay and allowances to a member or former member 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. Waiver is not appropriate when the member knew or should have known that he

(1)

was receiving overpayments. See DOHA Claims Case No. 97031009 (July 18, 1997); Colonel Alfred F. Streck, USAFR (Retired), B-254265, Dec. 20, 1993.

Because the member stated that he was unaware until November 1993 that deductions for his spouse were not being deducted from his retired pay, repayment of the premiums for the period from April 1991 until November 1993 was waived. Waiver of collection for subsequent premiums is not appropriate because the member was on notice that no deductions were being made. See DOHA Claims Case No. 97031009, supra.

The member has not demonstrated that his spouse did not have SBP coverage before premium deductions were initiated. In such situations, the Comptroller General has ruled, and we agree, that there is coverage for the member's beneficiary during the period when deductions are not made, as long as the member has elected coverage. See B-253900, Nov. 4, 1993. Under the Correction Board's action in the situation before us, coverage began April 1, 1991. The member would therefore be indebted for all premiums beginning on that date if waiver had not been granted for collection for the first 32 months. As discussed above, waiver cannot be granted for the next 34 months, because he was aware that deductions were not being made.

### **Conclusion**

We affirm the Settlement Certificate.

/s/ \_\_\_\_\_

Michael D. Hipple

Chairman, Claims Appeals Board

/s/ \_\_\_\_\_

Christine M. Kopocis

Member, Claims Appeals Board

/s/ \_\_\_\_\_

Jean E. Smallin

Member, Claims Appeals Board

1. While this case deals with salary payments rather than SBP, it illustrates the waiver principle that waiver is not appropriate when the employee or member is aware that he is being overpaid.