

September 30, 1998

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In Re:

[Redacted]

Claimant

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Claims Case No. 98060410

## CLAIMS APPEALS BOARD DECISION

### DIGEST

Because a member did not decline Survivor Benefit Plan (SBP) coverage for his spouse when he retired, she became his SBP beneficiary and remained so until they divorced. The member notified the Service of his remarriage, but because he did not decline SBP coverage for his new spouse, she became his SBP beneficiary one year after their marriage. SBP premiums should have been deducted from his retired pay beginning one year after the marriage, but they were not. If the member had died during the seven years when premiums were not being deducted, his wife would have become eligible for an SBP annuity. Since the member received the benefit of SBP coverage for those seven years, repayment of the unpaid premiums may not be waived.

### DECISION

We have been asked to render a decision regarding the request of a service member for waiver of a debt which arose when Survivor Benefit Plan (SBP) annuity premiums were not deducted from his military retired pay after his remarriage.

#### Background

The member retired from active duty in December 1982. Because he did not submit an SBP Election Certificate (DD Form 1883) to decline coverage, he was automatically enrolled in SBP with spouse and child coverage, and SBP premiums were deducted from his retired pay.<sup>(1)</sup> Child coverage ceased as of July 1983, and spouse coverage ceased when the member was divorced on September 1, 1983. At that time, the member forwarded a copy of his divorce decree to the appropriate office to insure that SBP deductions would cease. The member remarried in December 1988. SBP premiums should have been deducted from the member's retired pay beginning in January 1990, but this did not occur. The member's leave and earnings statements during this period indicate that the member was married and that no SBP election was reflected on his account. When the member visited the Defense Finance and Accounting Service (DFAS) for an unrelated reason in 1997, the technician discovered that SBP premiums were not being deducted.<sup>(2)</sup> The member's spouse was retroactively enrolled in SBP as of January 1, 1990, and the member became indebted for the retroactive premiums in the amount of \$24,369.68. He argues that the debt should be waived because it arose due to administrative error.

#### Discussion

Under 10 U.S.C. § 2774, this Office may 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 a member to waiver. See DOHA Claims Case No. 98051107 (July 28, 1998); and Master Sergeant Haywood A. Helms, USAF, B-190565, Mar 22, 1978.

The SBP, 10 U.S.C. §§ 1447-1460b, is an income maintenance program for the survivors of deceased members of the uniformed services. (3) If a married member does not decline SBP coverage for his spouse upon retirement, coverage for the spouse is initiated. See 10 U.S.C. § 1448(a)(2). If the member ceases to have an eligible spouse beneficiary and later remarries, he may decline coverage for the subsequent spouse if he does so within the first year of marriage. See 10 U.S.C. §1448(a)(6). Comptroller General decisions indicate that a debt which arises due to non-deduction of insurance or SBP premiums may not be waived if the member received the benefit of coverage. See Frederick D. Crawford, 62 Comp. Gen. 608 (1983); Lieutenant Colonel Marion A. Marvin, Jr., USAF (Retired), B 252123, Aug. 4, 1993; and Colonel Alfred F. Streck, USAFR (Retired), B-254265, Dec. 20, 1993.

As noted above, when an active-duty member does not in writing decline to participate in SBP at retirement, full SBP coverage is initiated. Section 1448(a)(6) of title 10 of the United States Code and prior Comptroller General decisions indicate that once a member is an SBP participant, he continues to be considered a participant, even during a period when he has no eligible beneficiary and no premiums are being deducted from his retired pay. When he remarries, therefore, his new spouse becomes a beneficiary unless he formally declines coverage within the first year of marriage. (4) See Colonel Robert F. Schultz, USAF (Retired), B-249740, June 4, 1993. (5)

In the case before us, the member's spouse became his SBP beneficiary one year after they married, because the member did not decline SBP coverage within that year. If the member had died before DFAS began deducting SBP premiums from his retired pay, she would have become eligible for an SBP annuity, although DFAS would have collected the outstanding SBP premiums from her annuity. Because the member thus received the benefit of SBP coverage beginning in 1990, we must deny waiver of premiums due from 1990 until 1997. See Frederick D. Crawford, 62 Comp. Gen. 608, *supra*; Marion A. Marvin, Jr. USAF (Retired) B-252123, *supra*; and Colonel Alfred F. Streck, USAFR (Retired), B-254265, *supra*. (6)

### Conclusion

Waiver of the member's debt of \$24,369.68 is denied.

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/s/

Michael D. Hipple

Chairman, Claims Appeals Board

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/s/

Christine M. Kopocis

Member, Claims Appeals Board

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/s/

Jean E. Smallin

Member, Claims Appeals Board

1. The member was not aware until after his retirement that full SBP coverage is initiated at retirement if a member does not formally decline coverage. (We point out that the declining of coverage by a member requires the notification and concurrence of his spouse.)

2. The member had notified the Marine Corps of his remarriage, but the personnel who administer SBP apparently were not aware of his remarriage, and the member apparently had not contacted them directly as to his second wife's status under SBP.

3. The statute which established SBP, Pub. L. No. 92-425, 86 Stat. 706, was enacted in 1972.

4. Just as the concurrence of his spouse is required under 10 U.S.C. § 1448(a)(3) when a member declines coverage at retirement, spousal concurrence is required under 10 U.S.C.

§ 1448(a)(6).

5. In B-249740, the member wished to elect SBP coverage for his second wife, but was not able to do so until after the death of his former spouse more than a year after his remarriage. The member's continuing status as an SBP participant was one of the factors which led to his being able to elect coverage for his second wife.

6. We note that in those cases the employee or member had elected coverage and should have been aware that the appropriate premiums were not being deducted. While in the present case the member had not taken affirmative action to elect coverage for his current spouse, his first wife had become his SBP beneficiary because he did not formally decline coverage. In our view, a reasonably prudent person would have made an inquiry regarding the SBP status of his current spouse to avoid a similar occurrence in spite of the "no SBP election" notation on his leave and earnings statements.