

April 27, 1999

In Re:

[Redacted]

Claimant

)

Claims Case No. 99031607

CLAIMS APPEALS BOARD DECISION

DIGEST

When at least one of the parties to a marriage becomes a *bona fide* resident of a foreign country before obtaining a divorce in that country, this Office will generally not question the validity of the divorce. Therefore, we allow reinstatement of the SBP annuity of a military widow who provided documentation that her husband, who became a resident of Panama in 1978, obtained a Panamanian divorce in 1985 before marrying her later that year. She is also entitled to retroactive payment of the annuity from its suspension in 1992.

DECISION

We have been asked to render a decision regarding the claim of the widow of a retired Army member for reinstatement of a Survivor Benefit Plan (SBP) annuity. An annuity was established for the widow shortly after his death, but payment was halted due to a competing claim by the member's former spouse. In Settlement Certificate Z-2867982, September 28, 1992, the Claims Group of the U.S. General Accounting Office determined that a court of competent jurisdiction should rule on the validity of the member's divorce and the marital status of the two claimants before payment of the SBP annuity could be resumed.⁽¹⁾ The member's widow now claims reinstatement of the annuity.

Background

According to the record before us, the member married his former spouse in South Carolina in 1966. They separated in 1974 while he was stationed in the former Canal Zone, and she requested and received transportation back to the continental United States. The member apparently retired in 1977. In 1978 he became a legal resident of Panama. He continued to reside in Panama, eventually becoming a Federal civilian employee. He obtained a divorce in Panama in February 1985 and remarried in July 1985, also in Panama. The member died in 1989, and his widow began receiving an SBP annuity.⁽²⁾ Payment was halted in 1992 due to the competing claim. The member's widow has submitted proof of the member's divorce and subsequent marriage to her. She urges that we accept those documents as proof of her entitlement to an SBP annuity without further court action.

Discussion

The SBP, 10 U.S.C. § 1447-1460b, is an income maintenance program for survivors of deceased members of the uniformed services. Since domestic relations law is a matter of state rather than federal law, Comptroller General decisions normally look to state law to determine the identity of a member's widow when there are competing claimants, and we agree with that approach. When a member divorces and remarries in accordance with state law, the surviving spouse generally qualifies as his widow. According to a line of Comptroller General decisions, the outcome is less clear if one or both spouses travel to another country and reside there only briefly for the purpose of obtaining a divorce. In such a situation, the divorce and subsequent marriage are of doubtful validity, and a court of competent jurisdiction must determine the identity of the member's widow. See *Lieutenant Commander Joseph Eugene Smith, USN (Retired) (Deceased)*, B-217743, July 15, 1985. When both parties are *bona fide* residents of the foreign country, however,

Comptroller General decisions accept the validity of the divorce without resort to a court order, particularly when both parties are personally present and personally participate in the proceedings. See *Petty Officer Martha E. Laster, USN, and Airman Michael L. Laster, USN*, 61 Comp. Gen. 104 (1981).

The facts in the current claim vary somewhat from those in either of the two decisions noted above. The record here suggests that the divorce was obtained without the former spouse's active participation in the proceedings. On the other hand, the record clearly indicates that the member had established a *bona fide* residence in Panama years before he initiated divorce proceedings. It appears that he lived and worked in Panama from the time of his retirement, through the time of the divorce, to the time of his death. The record indicates that the former spouse departed Panama, and even though her legal assistance attorney urges that we apply North Carolina law to determine whether comity should be granted to the divorce, there is no indication that the member was domiciled in North Carolina at the time of the divorce. In view of the particular facts in this case, and in absence of a decision on the merits by a court of competent jurisdiction, we believe that most of the States in the Union would have granted comity to the divorce here.

Even if North Carolina law had applied, our decision here to recognize the member's divorce in Panama is consistent with the decision of the Court of Appeals of North Carolina in *Mayer v. Mayer*, 66 N.C. App. 522, 311 S.E. 2d 659 (1984), *rev. denied*, 311 N.C. 760, 321 S.E. 2d 140 (1984). This decision is cited by the claimant's former legal assistance officer and noted by the Comptroller General in his decision *Patsy Riccardi, USN, Retired (Deceased)*, B-227505, Sept. 21, 1987. In *Mayer*, the Court did not have to decide on the validity of a Dominican divorce to reach a result, but it rejected comity where a person like Mrs. Mayer had no connection with the foreign jurisdiction, the Dominican Republic, except for a five-day stay to complete the necessary processing to obtain a divorce much more rapidly than the one year required under North Carolina law. Mrs. Mayer and her former husband, the defendant in a previous divorce being collaterally attacked by the next husband, were both domiciled in North Carolina at the time of the divorce, and the Court was very concerned about domiciliaries with sufficient financial resources flouting its public policy.

In interpreting the *Mayer* decision, the Comptroller General notes that North Carolina law recognizes bilateral foreign divorces, which are defined as divorces in which either one of the parties is domiciled in the state of divorce or both parties are represented in the forum through personal appearance or attorney representation. *Riccardi, supra*. Moreover, in accordance with the general principle that the domicile of one spouse within the authority of the divorcing court is sufficient to confer jurisdiction, divorces rendered by the courts of foreign nations are ordinarily accorded domestic recognition where it is shown that the petitioning spouse was a *bona fide* domiciliary or resident of the foreign nation at the time the decree was entered. See R.F. Chase, Annotation, *Domestic Recognition of Divorce Decree Obtained in Foreign Country and Attacked for Lack of Domicil or Jurisdiction of Parties*, 13 A. L. R. 3d 1419 (1967).

Accordingly, we disagree with the Claims Group's determination in the Settlement Certificate cited above, and we will not question the member's divorce and subsequent marriage to the claimant before us. In the absence of a remarriage, she is his widow, and payment of the SBP annuity established for her in 1989 and interrupted in 1992 may be resumed.

The Defense Finance and Accounting Service (DFAS) indicates that the widow contacted them twice during 1994 regarding the suspension of her SBP annuity, once herself and once through her attorney. We view that correspondence as appeals which toll the running of the statute of limitations on her claim.⁽³⁾ In the present situation, the claimant filed her SBP claim in a timely manner, and the annuity was established for her. Since she acted within the prescribed period, she is entitled to the annuity with retroactive payment from the suspension of payment in 1992.

Conclusion

The widow's claim is allowed.

/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. In 1992, SBP claims were handled by the Comptroller General. Jurisdiction over such claims was transferred to the Secretary of Defense pursuant to Pub. L. No. 104-316, October 19, 1996. The Defense Office of Hearings and Appeals (DOHA) has been delegated authority to exercise the Secretary's responsibilities in this area.

2. Pursuant to the member's 1977 election under 10 U.S.C. § 2771, his former spouse received his arrears of pay.

3. Prior to 1989, the widow would have had to contact GAO to toll its statute of limitations, the Barring Act, 31 U.S.C. § 3702(b). During 1989 the relevant regulations were amended to provide that the Barring Act is tolled by a claimant's contacting the agency involved in the claim, in this case DFAS. *See* B-198713.4, Dec. 11, 1989.