



Office of the General Counsel

B-236252

August 29, 1989

The Honorable Thomas J. Downey
Member, United States
House of Representatives
4 Udall Road
West Islip, New York 11795

Dear Mr. Downey:

This is in response to your letter of June 15, 1989, to the Navy regarding Mrs. [redacted] claim to a Survivor Benefit Plan (SBP) annuity as the widow of [redacted] USN deceased. The matter was referred to this Office by the Navy by letter dated July 6, 1989.

The record indicates that there is some uncertainty as to whether [redacted] or [redacted] is the widow of [redacted] filed for divorce from Mr. [redacted] in California in 1972. An interlocutory judgment of dissolution was entered on September 13, 1976. Apparently, Mr. [redacted] received notice that a final judgment of dissolution of his marriage to [redacted] was entered on December 15, 1976. On January 26, 1977, he married [redacted]. No record of a final judgment of dissolution of the marriage of Mr. [redacted] and [redacted] can be located in the California court records. [redacted] received SBP payments for a time but is not receiving them now pending resolution of this matter.

Under 10 U.S.C. § 1450(a), payment of an SBP annuity is to be made to a service member's "eligible widow." That term is defined in 10 U.S.C. § 1447(3) as the "surviving wife." Therefore, SBP payments should be made to the person who was legally married to Mr. [redacted] at his death.

California law (Civil Code § 4514) provides that a marriage is terminated only by a final judgment of dissolution, not an interlocutory judgment. Under that provision, lack of a final judgment dissolving [redacted] marriage would tend to indicate that she is Mr. [redacted] widow. However, section 4513 of the same code allows the court to enter a nunc pro tunc judgment to dissolve a marriage

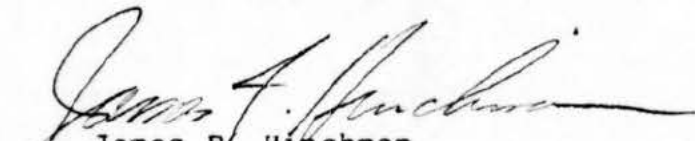
retroactively if it determines that a final judgment of dissolution should have been entered but was not entered due to "mistake, negligence or inadvertence." California procedure allows a putative second wife to move the court to enter a final judgment nunc pro tunc. See Hull v. Hull, 102 Cal. App. 2d 382, 227 P.2d 546 (1951).

A similar situation to this matter was considered in our decision Lieutenant [redacted], Retired (Deceased), B-207592, June 23, 1982 (copy enclosed). In that case, a service member remarried after obtaining only an interlocutory judgment of dissolution of his marriage in a California court. Both women claimed the SBP annuity. We concluded that a determination of which woman was the legal widow was a matter to be resolved under California law. Because we were unable to determine with reasonable certainty which claimant would be considered the legal widow under California law, we could not authorize payment of the SBP annuity to either claimant until a court of competent jurisdiction determined the identity of the legal widow.

As in the [redacted] case, we are unable to authorize SBP payments to either [redacted] or [redacted] until a court of competent jurisdiction determines which woman is the legal widow of Mr. [redacted].

We trust this serves the purpose of your inquiry.

Sincerely yours,


James F. Hinchman
General Counsel

Enclosure