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DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-203903

DATE: September 3, 1981

MATTER OF: Commander Mike J. Trens, USN (Retired)

DIGEST: A person who is married to a retired Navy member for less than 1 year prior to his disappearance may not be considered his widow under the Survivor Benefit Plan (SBP), 10 U.S.C. 1447-1455, even though a State court determined that the date of death was later than 1 year from the date of marriage because the court's decision was not based upon a full presentation of the facts and because the United States was not a party to that action. Widow's claim is too doubtful to allow because there is no showing that husband was alive after the disappearance of the ship on which he was sailing less than 10 months after the marriage.

The question is whether an individual who marries a retired Navy member following his retirement and is married to him for less than 1 year at the time he disappears may be considered his widow for the purposes of receiving an annuity under the Survivor Benefit Plan (SBP), 10 U.S.C. 1447-1455 (1976), when a State court determines that the actual date of death was over 1 year from the date of their marriage. We do not believe the individual is entitled to an annuity under the SBP.

The question was presented by the Commander, Navy Finance Center, Cleveland, Ohio, for an advance decision concerning the propriety of commencing annuity payments under the SBP, to Mrs. Barbara K. Trens, widow of Commander Mike J. Trens, USN (Retired). The matter has been assigned Submission Number DO-N-1365 by the Department of Defense Military Pay and Allowance Committee.

Commander Trens was retired from the United States Navy on August 1, 1970. On February 22, 1978, he married Barbara K. Trens and on April 5, 1978, he submitted an SBP election, pursuant to 10 U.S.C. 1448 (1976), to provide an annuity for his spouse in the event of his death.

On December 9, 1978, Commander Trens boarded the merchant vessel M/V Holoholo, sailing from Honolulu, Hawaii. The ship was never heard from after December 9, 1978, and all persons

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B-203903

aboard have subsequently been considered missing and presumed dead.

The First Circuit Court, State of Hawaii, entered an order on May 18, 1979, establishing Commander Trens' date of death to be on or about April 9, 1979. The petition filed in that matter and the court order are not contained in the file. However, informal discussion with the Clerk's Office indicates that the United States was not a party to the proceedings. Also, it appears that the date of death, established by the court, was based upon a single affidavit, submitted by an individual who knew Commander Trens personally and who voiced his belief that Commander Trens died on or about April 9, 1979. Subsequent to this judicial determination, a Marine Board of Investigation, convened to investigate the accident, issued a letter to Mrs. Trens indicating that the ship Holoholo disappeared on or about December 11, 1978, with loss of life occurring at that time.

Section 1447(a)(3), of title 10, United States Code, defines "widow" as the surviving wife of a person who, if not married to the person at the time he became eligible for retired or retainer pay, was married to her for at least 1 year immediately before his death. Thus, the issue presented is whether Mrs. Trens satisfies this requirement by being married to Commander Trens for at least 1 year prior to his death.

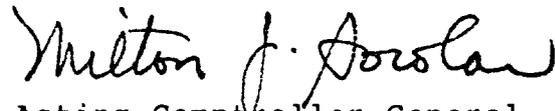
In cases where a judicial decree declares that a missing person is presumed to be dead on a designated date, such a decree does not establish that the person concerned lived for any fixed period or that his life did not end immediately after his unexplained absence. See Davie V. Briggs, 97 U.S. 628 (1878), Russell F. Thornberry, B-174048, December 28, 1978. We have said that in the absence of an applicable Federal statute, we will give great weight to the determination of State courts, under State statutes, particularly where the United States has been represented in the State court and the pertinent issues are presented to the court. See Amos E. Shook, B-187165, September 16, 1976. However, where the only basis presented to us to establish a necessary qualification for payment of a claim under the SBP is a State court decree, entered on the basis of presumptive evidence in a proceeding in which the United States is not a party, we have followed

B-203903

the rule that the United States is not necessarily bound by such a decree. See Privett v. United States, 256 U.S. 201 (1921), United States v. Candelaria, 271 U.S. 432 (1926). B-201128, March 6, 1981.

In this case, the facts do not support a continuation of life after December 11, 1978. The opposite conclusion appears warranted based on the inquiry of the Marine Board of Investigation. In the absence of further proof that Mr. Trens was alive after the date of the disappearance, Mrs. Trens' claim to an annuity under the SBP is too doubtful to be allowed because the statutory requirement that she be married to Commander Trens for at least 1 year immediately prior to his death is not satisfied.

Accordingly, in view of the lack of specific information indicating that Commander Trens continued to live after December 11, 1978, Mrs. Trens is not entitled to an SBP annuity.



Acting Comptroller General
of the United States