

DECISION



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

FILE: B-220546

DATE: April 7, 1986

MATTER OF: Chief Petty Officer Samuel L.
Anderson, USN, Retired, Deceased

DIGEST:

A retired Navy petty officer's general agreement to "continue to maintain his military benefits" for his family, included in a separation agreement he executed in 1974, is not an agreement to elect to "provide an annuity" for his former wife under the Survivor Benefit Plan. Under the laws then in effect military retirees could not provide survivor annuity coverage for a former spouse and consequently such general language in a separation agreement executed then may not be construed to include the election of annuity coverage for his former wife. Moreover, the agreement placed him under no obligation to provide annuity coverage for his former wife later when the laws were amended to permit military retirees voluntarily to elect coverage for a former spouse to the exclusion of a current spouse. Hence, after the petty officer died his widow rather than his former wife was entitled to his Survivor Benefit Plan annuity.

The question in this case is whether the current or the former spouse of a deceased Navy petty officer is entitled to his Survivor Benefit Plan annuity.^{1/} The former spouse's claim is based on a provision of a separation agreement entered into in 1974 and subsequently approved by

^{1/} This action is in response to a request for an advance decision submitted under the provisions of 31 U.S.C. § 3529 by the Disbursing Officer, Navy Finance Center. The request was forwarded here by the Commander of the Navy Finance and Accounting Center after it was cleared through the Department of Defense Military Pay and Allowance Committee and assigned submission number DO-N-1456.

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court order in divorce proceedings that "the husband shall continue to maintain his military benefits for his entire family * * *." On the basis of the facts presented, and the applicable provisions of statute, we conclude that the former spouse did not gain entitlement to a Survivor Benefit Plan annuity under this agreement, and the annuity is consequently payable to the current spouse.

Background

Chief Petty Officer Samuel L. Anderson was transferred from active service with the Navy to the Fleet Reserve in 1973. At that time he was married to Barbara L. Anderson. They separated, and in July 1974 they entered into a written separation agreement which included the following provision:

"IT IS FURTHER understood and agreed that the husband shall continue to maintain his military benefits for his entire family which includes insurance, medical, dental, and any and all other miscellaneous type benefits."

A court of the State of Washington subsequently approved the separation agreement in divorce proceedings and incorporated the agreement in the final decree of dissolution of marriage rendered on March 2, 1978, terminating the marital relationship between Chief Anderson and Barbara L. Anderson.

On August 6, 1983, Chief Anderson married Macel M. Anderson. Macel M. Anderson remained his wife until April 21, 1985, when he died.

At the time Chief Anderson retired from active naval service in 1973 he chose to become a participant in the Survivor Benefit Plan and to have spouse coverage under that Plan. He thus chose to receive retired pay at a reduced rate in order to provide an annuity for his surviving spouse following his death.

Following Chief Anderson's death in April 1985 the Navy Finance Center commenced payment of a Survivor Benefit Plan annuity to his widow, Macel M. Anderson. Barbara L. Anderson, through her attorney, subsequently suggested that she, instead, might be entitled to the annuity as a former spouse beneficiary, based on the quoted provision of the

separation agreement. Navy officials now question whether the annuity should be paid to Barbara L. Anderson rather than Macel M. Anderson on the basis of the 1974 separation agreement, under a 1984 amendment to the Survivor Benefit Plan which concerned written agreements to elect to provide an annuity to a former spouse.

Analysis and Conclusion

The Survivor Benefit Plan, 10 U.S.C. §§ 1447-1455, was established by the Congress in 1972 as an income maintenance program for the dependents of deceased service members.^{2/} Under the original legislation, there was no general authority for a retiree to elect coverage for a former spouse, and upon a divorce a retiree's former spouse lost annuity coverage under the Plan.^{3/}

In September 1983 Congress amended the Survivor Benefit Plan to enable a retiree voluntarily to elect coverage for a former spouse to the exclusion of a current spouse.^{4/} A person who on the date of enactment of the amendment, September 24, 1983, was a participant in the Plan providing coverage for a spouse, was given 1 year to elect coverage for a former spouse.^{5/}

^{2/} Public Law 92-425, September 21, 1972, 86 Stat. 706. See, generally, S. Rep. No. 1089, 92d Cong., 2d Sess., reprinted in 1972 U.S. Code Cong. & Ad. News 3288.

^{3/} See Brigadier General Fred A. Treyz, USAF, Retired, Deceased, B-217739, December 19, 1985, 65 Comp. Gen. _____. Under the original legislation, Plan participants could provide annuity coverage for a former spouse only if they were unmarried and had no dependent child, and the former spouse had an "insurable interest" in them. 10 U.S.C. § 1448(b) (1970 ed., Supp. III 1973).

^{4/} See 10 U.S.C. § 1448(b)(3), as amended by Public Law 98-94, § 941(a)(2), September 24, 1983, 97 Stat. 614, 652. See also S. Rep. No. 174, 98th Cong., 1st Sess. 255-257, reprinted in 1983 U.S. Code Cong. & Ad. News 1081, 1145-1147.

^{5/} Public Law 98-94, § 941(b), 97 Stat. 614, 653.

In addition, in October 1984 Congress further amended the Survivor Benefit Plan to treat the situation where a Plan participant entered into a "voluntary written agreement" to elect "to provide an annuity" to a former spouse incident to divorce proceedings, and the agreement was incorporated in a court order, but the participant then fails or refuses to make the election. The amendment requires, then, that the participant "shall be deemed to have made such an election * * *."^{6/} This is the amendment brought into question by the Navy finance officials in this case. The legislative history of that 1984 amendment reflects that while a retiree's election to provide an annuity for a former rather than a current spouse was to remain a voluntary act of the retiree, the Congress recognized that the issue of whether a Plan participant would designate a former spouse as a beneficiary could very well become an item of negotiation in a divorce settlement. Congress concluded that if a Plan participant voluntarily agreed in writing to make such an election, the former spouse should be entitled to rely upon that agreement.^{7/}

In the present case, Chief Anderson never agreed in writing specifically to designate Barbara as a Plan beneficiary. While he did agree in July 1974 to "continue to maintain his military benefits for his entire family," under the provisions of the Survivor Benefit Plan legislation then in effect he could not, as a matter of law, have continued to maintain spouse coverage under the Plan for Barbara after their divorce. Hence, we are unable to conclude that the general language of the July 1974 separation agreement at issue may be considered a voluntary written agreement to elect to provide an annuity under the Survivor Benefit Plan for Barbara after their divorce.^{8/} Moreover, after the law

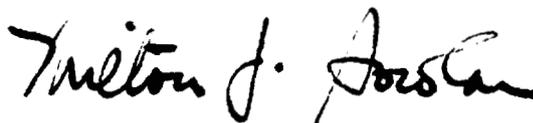
^{6/} See 10 U.S.C. § 1450(f)(3), as amended by Public Law 98-525, § 644, October 19, 1984, 98 Stat. 2492, 2545.

^{7/} See S. Rep. No. 500, 98th Cong., 2d Sess. 221-222 (1984).

^{8/} Compare Brigadier General Fred A. Treyz, USAF, Retired, Deceased, 65 Comp. Gen. ____, supra, concerning an annuity election made in 1983 in favor of a former spouse under a preexisting agreement specifically requiring such election contingent on the subsequent amendment of the Survivor Benefit Plan by the Congress to allow former spouse annuity coverage.

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was subsequently amended to permit the designation of a former spouse as a beneficiary under the Plan, their separation agreement was not renegotiated or modified, nor did Chief Anderson elect to provide annuity coverage for Barbara within the 1-year election period. Rather, he allowed the Plan annuity coverage to remain in effect for his then current spouse, Macel M. Anderson. In these circumstances, we do not find that Chief Anderson ever entered into a court-approved agreement to elect to provide a Survivor Benefit Plan annuity for his former spouse, Barbara L. Anderson. Consequently, our view is that he cannot be "deemed to have made such an election" under the 1984 amendment to the Survivor Benefit Plan referred to by the concerned Navy finance officials, and we conclude on the contrary that his widow, Macel M. Anderson, is entitled to the annuity.



Acting Comptroller General
of the United States