



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Patsy Riccardi, USN, Retired (Deceased)

File: B-227505

Date: September 21, 1987

DIGEST

Claim for Survivor Benefit Plan (SBP) annuity by the alleged fourth wife of a deceased former service member cannot be allowed. Absent a determination by a court of competent jurisdiction of the validity of the service member's foreign divorce from his third wife, the marital status of the service member who obtained the divorce in Mexico and subsequently married the claimant here is too uncertain to determine the proper recipient of the member's SBP annuity. In any event, even if the foreign divorce were validated so as to make the claimant the service member's lawful wife at the time of his death, she could not qualify for the SBP annuity. Member's action in listing his third wife as spouse on the SBP form after his marriage to fourth wife, if the divorce is valid, nullifies his election to participate in the SBP and no one gets the annuity.

DECISION

The claimant in this case, Rosemary Riccardi, seeks to establish her entitlement to a Survivor Benefit Plan (SBP) annuity under 10 U.S.C. §§ 1447 et seq., as the surviving spouse of a deceased former service member, Patsy Riccardi. Rosemary Riccardi asserts that the Mexican divorce obtained by Patsy Riccardi from his third wife, Dorothy, should be recognized in order to validate his subsequent marriage to her as his fourth wife for purposes of entitlement to his SBP annuity.

For the reasons set forth below we conclude that, in the absence of a determination by a court of competent jurisdiction as to whether Patsy Riccardi's divorce from Dorothy Riccardi was valid, the marital status of Rosemary Riccardi is too uncertain to authorize the payment of a SBP annuity to her as his surviving spouse. Furthermore, even if Rosemary's marriage is found valid, she cannot receive

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the annuity because the affirmative election by Patsy declaring Dorothy as his current spouse for SBP benefits after his alleged marriage to Rosemary would serve to nullify his election to participate in SBP benefits. Therefore, no one would qualify for the annuity in these circumstances. Any premiums collected from Patsy towards his SBP would then go to his beneficiary under 10 U.S.C. § 2771.1/

This is an appeal by Rosemary Riccardi from a determination by our Claims Group, Z-2864717, in which her claim for SBP payments in the name of Patsy Riccardi, deceased, was denied due to uncertainty as to the status of her marriage to Patsy Riccardi subsequent to a divorce from Dorothy Riccardi obtained in Mexico by Patsy.

Rosemary Riccardi asserts that she married Patsy Riccardi as his fourth wife on September 3, 1960. She states that he had obtained a divorce decree from his third wife, Dorothy, in Mexico, prior to 1957. The decree is believed to have been lost in the fire which destroyed his mother's home on July 25, 1979. In 1973, 13 years after his marriage to Rosemary, Patsy elected coverage under the SBP, listing Dorothy Riccardi as spouse and beneficiary. Mr. Riccardi died in Cleveland, Ohio, on August 10, 1986.

An SBP annuity may be paid to an eligible widow, as defined by the applicable statutory provisions, 10 U.S.C. § 1450(a) (Supp. III, 1985). See, e.g., Lieutenant Weldon E. Maki, Retired (Deceased), 56 Comp. Gen. 1022 (1977). An eligible widow, under 10 U.S.C. § 1447(3) (1982), must have been married to the member at the time he became eligible for retired pay, or at least 1 year before he died. Further, she must be the "surviving wife," i.e., she must be legally married to the member at the time of his death. Id.

According to the record, Patsy and Rosemary married in North Carolina, but the status of Patsy's divorce from Dorothy is questionable. The great weight of authority holds that divorces granted in foreign countries to United States domiciliaries are not valid and enforceable.

1/ Section 2771(a) provides an order of priority in the final settlement of accounts of deceased members of the armed forces for amounts due from the armed force, which lists as the highest priorities: (1) the beneficiary designated by him in writing to receive such amount, (2) the surviving spouse, and (3) children and their descendants, by representation.

The validity of a foreign divorce decree depends on the foreign court having an adequate jurisdictional basis. Mayer v. Mayer, 66 N.C. App. 522, 311 S.E.2d 659 (1984). North Carolina law recognizes bilateral foreign divorces.

A bilateral divorce is one in which either one of the parties is domiciled in the state of the divorce or both parties are represented in the forum through personal appearance or attorney representation. Mayer v. Mayer, above. However, since the record before us contains no information as to the circumstances surrounding Patsy's alleged Mexican divorce from Dorothy, whether or not Patsy and Dorothy Riccardi obtained a bilateral divorce which a United States court, North Carolina or otherwise, would recognize is not discernable. Therefore, pending recognition of the divorce by a court of competent jurisdiction, the marital status of Patsy and Rosemary Riccardi is too uncertain to serve as a basis for the payment of public funds. See e.g., Petty Officer First Class Bernice B. Paradise, USN (Retired) (Deceased), B-204367, April 6, 1982, modified on other grounds, B-204367, August 1, 1986.

Even if a court of competent jurisdiction did recognize Patsy's divorce from Dorothy and thereby validate his later marriage to Rosemary, Rosemary still would not be entitled to the SBP annuity. We have held that when a service member who retired before the effective date of the SBP (1972) later affirmatively elects SBP spouse coverage but designates an individual who cannot qualify as a surviving spouse, the member's election is invalid and precludes the payment of any SBP annuity. See e.g., Matter of Cline, 57 Comp. Gen. 426 (1978); Chief Petty Officer James G. Stratton, USN (Retired) (Deceased), B-207625(1), September 22, 1982; Paradise, above, B-204367, August 1, 1986. This rule applies to Patsy Riccardi, who retired from the service in 1954.

As noted previously, Patsy designated Dorothy as his spouse in the SBP election he executed in 1973. This designation postdates his alleged Mexican divorce from Dorothy and subsequent marriage to Rosemary. Thus, there is no way that Rosemary can qualify for Patsy's SBP annuity. Either Dorothy might qualify (in the event that Patsy's Mexican divorce from her was not valid) or Patsy failed to make any effective SBP election. If Rosemary could establish the validity of Patsy's divorce from Dorothy and marriage to her, although she would not qualify for the SBP annuity she would be eligible under 10 U.S.C. § 2771 to receive a refund of his SBP premiums as his surviving spouse unless

he designated someone else as his beneficiary under that statute. Information as to Patsy Riccardi's beneficiary under section 2771 was not provided to us so we are unable to make a definite determination in that regard, but this information should be available at the Navy Finance Center.

for *Harry R. Van Cleave*
Comptroller General
of the United States