



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Major Walter V. Shevchik, USA, Retired -
Child's Annuity Under the Survivor
Benefit Plan
File: B-225897
Date: September 25, 1987

DIGEST

Retired military member who has waived military retired pay in order to increase civil service annuity cannot use both military and civilian service to provide a double survivor benefit or annuity for a dependent child. Since by operation of law the dependent child of a civil service employee will receive a civil service survivor annuity, the child may not be a beneficiary for military Survivor Benefit Plan (SBP) annuity.

DECISION

The issue in this case is whether an individual who waived his military retired pay so as to apply his military service towards a civil service retirement may still elect to provide a Survivor Benefit Plan (SBP) annuity based on his military retired pay for his dependent child.^{1/} For the reasons to follow, we hold that there is no authority for the annuitant to provide an SBP annuity for his dependent child.

BACKGROUND

Major Walter V. Shevchik retired from active military duty after more than 20 years' service in the Army on February 29, 1956. Prior to retiring, he elected coverage for spouse and children under the predecessor plan to the SBP, the Retired Serviceman's Family Protection Plan (RSFPP). Subsequently, with the passage of the SBP law,

^{1/} The matter was presented for an advance decision by P. B. Wolfsheimer, Special Disbursing Agent, U.S. Army Finance and Accounting Center, Indianapolis, Indiana. The Department of Defense Military Pay and Allowance Committee approved the submission and assigned it number DO-A-1469.

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Major Shevchik elected to retain his RSFPP and have SBP coverage for his wife and child effective January 1, 1973.

Following his military retirement, Major Shevchik accepted a civilian position with the federal government, and he commenced employment on April 1, 1957. On December 31, 1974, he retired from the civil service and waived his military retired pay in order to add his military service to his civilian service to qualify for civil service retirement and civil service annuity.

Upon retiring from his civilian position, Major Shevchik declined a survivor benefit under the civil service survivor annuity program. Rather, he elected to have his military SBP for a wife and children remain in effect, for which he remitted payment monthly. On September 16, 1982, his wife died. On the death of his wife, the SBP costs for his spouse were suspended as of October 1, 1982. He continued to remit payment monthly for a child only SBP; however, effective August 31, 1985, this coverage was terminated retroactively to January 1, 1975, the date on which he began to receive civil service retirement.

Major Shevchik would prefer to have his child, who is permanently disabled, come under the SBP since the monthly benefits his child ultimately will receive under a civil service survivor annuity are, according to him, much less than the amount the child would receive under an SBP annuity. At Major Shevchik's request the Army investigated the matter to ascertain if somehow the child's civil service annuity could be waived. The Army informed him that according to an individual at the Office of Personnel Management (OPM), he could not waive his dependent child's survivor annuity. Upon his death, however, his child's guardian could waive the annuity. Therefore, if the annuity were waived, the Army asks us whether SBP coverage could be reinstated for the dependent child.

The Army also asks us to address whether our prior decisions in this area are applicable since in those decisions, unlike the present case, the retiree chose to have his spouse and children receive a civil service survivor annuity. In conjunction with this question, the Army asks whether the child's SBP coverage is terminated to prevent duplicate benefits since the civil service benefits arise by operation of law.

DISCUSSION

The Survivor Benefit Plan, 10 U.S.C. §§ 1447-1455 (1982), is an income maintenance program for the surviving dependents of retired service members. The Plan was established on

September 21, 1972, with the enactment of Public Law 92-425, 86 Stat. 706. Although the legislation was designed primarily to benefit the families of service members who became eligible for retirement after September 21, 1972, subsection 3(b) of Public Law 92-425 gave service members, like Major Shevchik, who had retired prior to that date an opportunity within specified time limits to participate in the Plan also. Elections to participate in the Plan by retirees, including those who retired prior to September 21, 1972, are binding and irrevocable. See 55 Comp. Gen. 158 (1975), and 53 Comp. Gen. 470, 474 (1974).

Section 1450(a) of title 10, United States Code, provides among other things that a retired member may elect for an SBP annuity to be paid to (a) the eligible widow or widower (b) dependent children if the eligible widow or widower is dead or otherwise has become ineligible, or (c) dependent children only. When, however, a retired military member becomes a civilian employee of the federal government and subsequently waives his retired pay for the purpose of including his military service time in the computation of a civil service retirement annuity, a different situation occurs. For example, under 10 U.S.C. § 1450(d), a retired service member who elects SBP coverage for his spouse and later waives his retired pay for the purpose of including his military service time in the computation of a civil service retirement and survivor annuity is entitled to civil service survivor annuity coverage only. The retiree, who otherwise may not voluntarily withdraw from the SBP, must withdraw from the Plan once he waives his retired pay and elects the civil service survivor annuity. Under 10 U.S.C. § 1452(e) he is no longer required to make payments to the Plan as long as his waiver is in effect.

These features were included in the original 1972 SBP legislation. The legislative history of the enactment provides this explanation:

"Military retirees who, after retirement, work in the Federal civil service and subsequently become eligible to retire from the civil service may waive their military retired pay and use their military years of service to increase their civil service benefits. S. 3905 would not allow a duplication of survivor benefits based on the same years of service. * * * When a military retiree waives his military retired pay to increase civil service retirement benefits and elects to join the civil service retirees survivor benefit plan, he would cease to contribute to the military plan during the time his waiver is in effect.

* * * * *

"An example is useful in explaining the application of the above recommendation. Assume a member retires from the military with 20 years of service, serves 10 years in the civil service, and retires from the civil service. Prior to retirement from the civil service, he would receive military retired pay and participate in the military survivor benefit plan based on 20 years of service. When he retires from the civil service, he can waive his military retired pay, receive civil service retired pay based on 30 years of service, participate in the civil service retiree survivor benefit plan based on 30 years of service, and cease participation in the military survivor benefit plan based on 20 years of service." S. Rep. No. 1089, 92d Cong., 2d Sess., reprinted in 1972 U.S. Code Cong. & Ad. News 3288, 3301.

In the present case, although the retiree may waive civil service survivor annuity for his spouse, he cannot waive civil service survivor annuities for a dependent child. Such an annuity arises by operation of law. See 5 U.S.C. § 8341(e); see also Federal Personnel Manual Supplement 831-1, S13-5 (Inst. 25, September 30, 1975). Accordingly, once an individual such as Major Shevchik retires and receives a civil service annuity, he cannot elect SBP coverage for his child only. This would violate the rule of law that survivor benefits may not be paid to an individual under the civil service survivor annuity program and simultaneously under the SBP. See 59 Comp. Gen. 225, 228 (1980).

Regarding any questions of waiver of the dependent child's civil service annuity, this is a matter for OPM since any questions regarding civil service retirement are solely within the authority of that Office. We are unaware of any authority under which the dependent child could receive an SBP annuity after waiver of a civil service survivor annuity. The election to participate in the SBP is solely that of the retired military member and would terminate with the member's death.

for *Narvey D. Van Cleave*
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