

Perez



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Lieutenant Colonel William R. Bell, USA
(Retired) - Survivor Benefit Plan - Former
Spouse Coverage

File: B-230460

Date: June 10, 1988

DIGEST

Amendments made to the Survivor Benefit Plan in 1983 gave retired service members the option of voluntarily electing survivor annuity coverage for "a former spouse." A further amendment enacted in 1984 provides that if a retiree agrees in writing to elect annuity coverage for a former spouse and then "fails or refuses" to do so, the retiree nevertheless "shall be deemed to have made such an election." The determination of whether a written agreement may properly serve as the basis for a "deemed" election depends on the specific terms of the particular agreement submitted. In the case of a retired Army officer who agreed to continue annuity coverage for his wife "whether or not the parties . . . are married," an election to provide former spouse coverage may properly be deemed to have been made since those terms establish that the officer made a commitment to maintain annuity coverage for her following their divorce.

DECISION

Lieutenant Colonel William R. Bell, USA (Retired), claims a refund of amounts deducted by the Army from his military retired pay for the costs of Survivor Benefit Plan annuity coverage for his former wife, Linda C. Bell.^{1/} We deny that claim.

^{1/} This action is in response to a request for an advance decision from Dorothy M. Oldham, Deputy Disbursing Agent, Army Finance and Accounting Center, concerning the propriety of making payment on a voucher in favor of Colonel Bell for amounts previously deducted from his military retired pay for Survivor Benefit Plan coverage for his former wife. The request was forwarded here by the Assistant Secretary of the Army for Financial Management after it was approved by the Department of Defense Military Pay and Allowance Committee and assigned submission number DO-A-1483.

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BACKGROUND

Colonel Bell retired from the Army on June 28, 1973, and elected to provide Survivor Benefit Plan (SBP) coverage for his wife, Linda C. Bell, and their children. He thereby elected to receive military retired pay at a reduced rate in order to provide an annuity for the members of his family if they survived him. Colonel and Mrs. Bell separated in 1977. In March 1977 they executed a Property Settlement Agreement and subsequently amended it as provided for in the agreement with regard to annuity benefits. The provision stated:

"WHEREAS, William R. Bell is retired from the United States Army and is receiving certain retirement benefits and the said William R. Bell has presently in effect an agreement whereby certain annuity payments will be payable to the wife and their children upon the death of William R. Bell, said annuity benefits are herein referred to as 'JUMPS - Army Retired Annuity,' and the parties desire that the wife and their children receive said annuity benefits after the death of the husband whether or not the parties hereto are married at the time of the death of the husband;

"NOW THEREFORE, for valuable consideration, the parties hereto have agreed as follows:

"1. That William R. Bell agrees to maintain and keep in full force and effect the 'JUMPS - Army Retired Annuity' presently in effect. That William R. Bell agrees that he will maintain said annuity in such a manner that so long as it is legally permissible Linda C. Bell and their children will receive the applicable annuity after the death of William R. Bell."

On September 15, 1978, the divorce became final and the Property Settlement Agreement was incorporated in the divorce decree. At the time the divorce was finalized SBP coverage was not available for former spouses and Linda C. Bell was no longer covered. Congress amended the law effective October 1, 1983, so that service members in Colonel Bell's circumstances could make an election for

a former spouse.^{2/} In 1984 Congress amended the law further to provide that an election for a former spouse could be deemed if there is a voluntary written agreement for SBP coverage for the former spouse, and the service member fails or refuses to make that election.^{3/}

Colonel Bell did not make an election for SBP coverage for his former wife, and she requested that a deemed election be established and SBP coverage provided for her on the basis of their Property Settlement Agreement. The Army granted her request, and former spouse coverage was established for her effective October 1, 1983. The costs of that coverage were deducted from his retired pay. He asserts that the Army erred in taking that action.

DISCUSSION

The SBP program, 10 U.S.C. §§ 1447-1455, was established by Congress in 1972 as an income maintenance plan for the dependents of deceased members of the uniformed services.^{4/} The original legislation did not authorize a retiree to elect coverage for a former spouse, and upon divorce a retiree's former spouse lost SBP annuity coverage. As indicated, however, in 1983 Congress amended the SBP law so that a retiree in Colonel Bell's circumstances could voluntarily elect coverage for a former spouse. In 1984 Congress further amended the law to treat the situation of an SBP participant who entered into a "voluntary written agreement" to elect to "provide an annuity" to a former spouse incident to divorce proceedings, but the participant then fails or refuses to make the election. The amendment required, then, that the participant "shall be deemed to have made such an election" 10 U.S.C. § 1450(f)(3).^{5/} The legislative history of the 1984 amendment reflects that although a retiree's election to provide an annuity for a former spouse was to remain a voluntary act of the retiree, Congress recognized that the issue of whether an SBP participant would designate a former spouse

^{2/} Public Law 98-94, the Department of Defense Authorization Act, 1984, Sept. 24, 1983, 97 Stat. 652.

^{3/} Public Law 98-525, Oct. 19, 1984, 98 Stat. 2492.

^{4/} Public Law 92-425, Sept. 21, 1972, 86 Stat. 706.

^{5/} As amended by Public Law 98-525 supra.

as a beneficiary could very well become an item of negotiation in a divorce settlement. Congress concluded that if an SBP participant voluntarily agreed in writing to make such an election the former spouse should be entitled to rely upon the agreement.6/

The agreement at issue here was entered into prior to the time the SBP law was amended to authorize elections to provide annuity coverage for a former spouse. The determination of whether such an agreement may properly serve as the basis for a "deemed" election depends on the terms of the particular agreement. Such determinations must be made on a case-by-case basis.7/

Colonel Bell argues that his agreement is too vague to be construed as a promise to provide SBP coverage for his former spouse if in the future the law permitted such an election. Colonel Bell states that the "Plan" referred to in the law is the SBP program. He goes on to point out that the Property Settlement Agreement only refers to "JUMPS-Army Retired Annuity" and not the SBP. He argues that this discrepancy leaves the meaning of the agreement unclear and therefore the provisions of 10 U.S.C. § 1450(f)(3)(a) do not apply to the agreement and an election should not be deemed under those provisions.

We are unable to agree with this argument. The Property Settlement Agreement states that Colonel Bell had in effect an agreement whereby certain annuity payments would be payable to Linda C. Bell and their children upon his death and "said annuity benefits are herein referred to as 'JUMPS-Army Retired Annuity.'" There is no evidence that this language referred to any annuity benefit plan other than the SBP program. Colonel Bell did, in fact, have in effect SBP coverage for Linda C. Bell and their children at the time the agreement was drawn up. Therefore, we find that "JUMPS-Army Retired Annuity" refers to the SBP program.

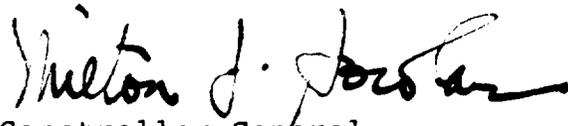
Colonel Bell also asserts that the agreement merely required him to maintain SBP coverage for Linda C. Bell for as long as the law permitted it, i.e., until their divorce became final. We are also unable to agree with

6/ See B-221968, Sept. 28, 1987, 66 Comp. Gen. 687. See also S. Rep. No. 500, 98th Cong., 2d Sess. 222 (1984); and H.R. Rep. No. 1080 (Conference), 98th Cong., 2d Sess. 301, reprinted in 1984 U.S. Code Cong. & Ad. News 4258, 4280.

7/ 66 Comp. Gen. 687, supra.

that argument. Under the laws governing the SBP program Colonel Bell did not have an option of either maintaining or discontinuing annuity coverage for her prior to their divorce. Rather, the law required that the coverage be maintained so long as they were married. Thus, Colonel Bell is essentially now suggesting that the Property Settlement Agreement was meaningless in that it obligated him to do nothing beyond what the SBP law automatically provided. In our view, this proposed interpretation of the agreement would be inconsistent with its terms and would defeat its purpose. The agreement clearly states that the "parties desire that the wife and their children receive said annuity benefits after the death of the husband whether or not the parties hereto are married at the time of the death of the husband." (Emphasis added.) Our view is that this plainly evidences a mutual intent that annuity coverage was to be extended to Linda C. Bell to the extent permissible under the SBP law regardless of whether she and Colonel Bell were divorced. We therefore find that Colonel Bell did voluntarily agree to elect his former spouse as an SBP beneficiary when the law permitted that election. He cannot now change the agreement. Hence, we find that the Army was correct in establishing a "deemed" SBP election for Colonel Bell's former spouse, Linda C. Bell.

The voucher presented for decision may not be approved for payment and will be retained here.


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