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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Conflicting Claims for SBP Annuity Incident to the Death of Technical Sergeant Marvin B. Prince, USAF

File: B-242964

Date: August 14, 1991

DIGEST

A service member made a Survivor Benefit Plan (SBP) election in favor of his ex-spouse as a natural person with an insurable interest. When they remarried, he attempted to change his SBP election to provide for her as his spouse. However, since the Air Force failed to notify her of the attempted change, she retained coverage as a person with an insurable interest despite their subsequent divorce and his remarriage and became entitled to an SBP annuity upon his death. The Air Force must collect from her the increased cost of coverage for a person with an insurable interest from March 1983 until the member's death.

DECISION

We have been asked to settle the competing claims of Mrs. Shirley M. Prince and Mrs. Sharon F. Prince for a Survivor Benefit Plan (SBP) annuity based on the military service of the late Technical Sergeant Marvin B. Prince, USAF. For the reasons presented below, Shirley Prince is entitled to an SBP annuity, subject to an initial deduction for the increased cost of coverage for a natural person with an insurable interest.

Sergeant Prince married Shirley Prince in 1954. They were divorced May 15, 1981. They remarried February 22, 1983, and divorced again September 10, 1985. Sergeant Prince then married Sharon Prince on November 15, 1985. He died September 21, 1990, leaving Sharon as his widow.

Sergeant Prince declined SBP coverage when it first became available in 1972. However, he elected coverage for Shirley on September 15, 1982, during an open enrollment period. Since Shirley was his former spouse at that time and since former-spouse coverage was not then available, Sergeant Prince elected coverage for her as a natural person with an insurable interest. After they remarried, he requested that the

Air Force change her status to that of spouse, at which time the cost of coverage was reduced accordingly. Shirley was not notified of the change in her SBP status. When they divorced again, the divorce decree directed that Shirley remain beneficiary of Sergeant Prince's SBP. However, since Sergeant Prince did not act to provide former-spouse coverage for Shirley within the required time frame, Air Force records indicated that Sharon became his beneficiary upon their first wedding anniversary. When Sergeant Prince died, Sharon began receiving monthly annuity payments. The Air Force ceased making payments to Sharon when Shirley filed a claim for benefits, and they have requested our decision regarding the proper recipient of Sergeant Prince's SBP annuity.

The SBP, 10 U.S.C. §§ 1447-55, was enacted by Congress in 1972 as an income maintenance program for dependents of deceased service members. See Pub. L. No. 92-425, 86 Stat. 706 (1972). An open enrollment period from October 1, 1981 to September 30, 1982, allowed retirees who had initially declined coverage to join the SBP. See Pub. L. No. 97-35, § 212, 95 Stat. 357 (1981).

Although the SBP originally made no provision for former spouses, a member who was unmarried and had no dependent children could elect coverage for a natural person with an insurable interest. See 10 U.S.C. § 1448(b)(1). According to § 1450(g), such an election by a competent member is irrevocable unless changed according to § 1450(f) to provide for a later-acquired spouse or dependent child. An amendment which took effect February 1, 1983, required that the person with an insurable interest be notified of any change of election. See Pub. L. No. 97-252, § 1003, 96 Stat. 718 (1982). Subsection 1450(a) provides that if the change is not made in accordance with § 1450(f)--i.e., with notice, the annuity remains payable to the person with an insurable interest. Id.

In 1982, Congress amended the SBP to allow coverage for former spouses. This amendment, however, was not effective until February 1, 1983. See Pub. L. No. 97-252, § 1003, 96 Stat. 718 (1982). In 1984 Congress enacted a provision to authorize the services to deem that a member had made a former spouse election if they received a request from the former spouse before October 1, 1985 or within 1 year of the court order granting the divorce. However, to obtain such an election under that provision the former spouse had to demonstrate that the member had entered into a voluntary written agreement to elect former-spouse coverage, that the agreement had been incorporated in or ratified or approved by a court order, and that the member had then failed or refused to make the election. See Pub. L. No. 98-525, 98 Stat. 2492 (1984). A later amendment allowed the services to deem that an election

had been made upon the request of a former spouse if the court had ordered the member to make the election. However, this amendment only applies to court orders issued on or after November 14, 1986. See Pub. L. No. 99-661, § 641, 100 Stat. 3816 (1986).

The fact that the Princes' final divorce decree stated that Shirley would remain the beneficiary of Sergeant Prince's SBP annuity does not affect those benefits. He did not file a former spouse election form with the Air Force. Shirley cannot receive a deemed election in the absence of a voluntary written agreement acknowledging such an election as required by Pub. L. No. 98-525, supra.

In 1982 when Sergeant Prince elected SBP coverage for Shirley Prince, she could be covered only as a person with an insurable interest because she was not married to him at that time. While he did not at that time provide documentation of her insurable interest, the Air Force considers that election valid due to her economic dependence and their impending remarriage.

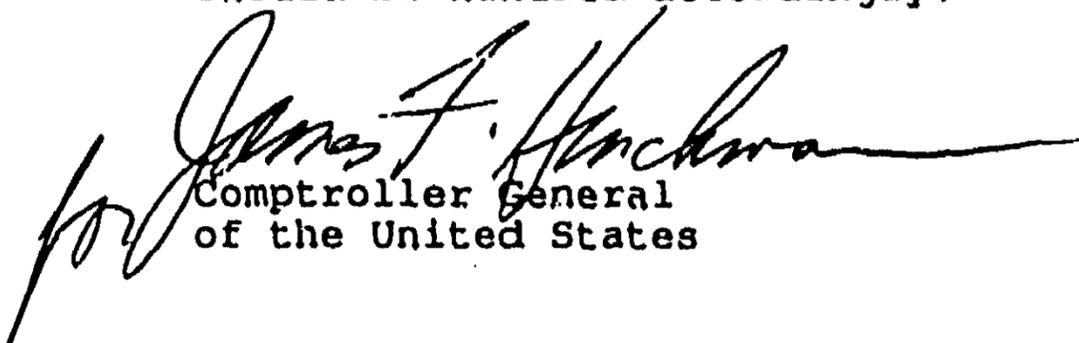
Sergeant Prince's attempt to change Shirley's SBP status from that of a natural person with an insurable interest to that of a spouse was not effective. As of February 1, 1983, the law required the Air Force to notify a beneficiary such as Shirley of her change in status, and the Air Force concedes it did not do so. While Shirley would have remained the beneficiary under the attempted change, her rights would have been affected by the change. For instance, annuity payments to a person with an insurable interest are not subject to social security offset at age 62 or to loss due to remarriage before the age of 55, while payments to a surviving spouse are subject to such limitations. Shirley Prince should have been notified of her husband's attempted change of her SBP status. Lack of notification voids the attempted change. See Maureen S. Fearn, 65 Comp. Gen. 696, 698 (1986). See also, Barber v. United States, 676 F.2d 651 (Ct. Cl. 1982).

Shirley Prince is entitled to an SBP annuity as a natural person with an insurable interest in the life of Sergeant Prince as of the date of his death. However, an amount reflecting the increased cost of that status after February 1983 must be deducted from the amount due her.

The record indicates that upon Sergeant Prince's death Sharon Prince received monthly annuity checks as his surviving spouse until the Air Force became aware of Shirley Prince's claim. Those payments were erroneous and are subject to recoupment, although Sharon Prince may request waiver of

collection of the erroneous payments pursuant to 10 U.S.C,
§ 1453. See DOD Military Pay and Allowance Committee Action
Number 560, 66 Comp. Gen. 687, 697 (1987).

The SBP claims based on Sergeant Prince's military service
should be handled accordingly.


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