

Matter of: Colonel Alfred F. Streck, USAFR (Retired)--
Waiver Request

File: B-254265

Date: December 20, 1993

DIGEST

Air Force Reserve member elected Survivor Benefit Plan (SBP) coverage but when he began receiving retired pay, no SBP premiums were deducted from his pay. He had been told the amount of his gross retired pay and should have suspected an error and contacted the proper authorities when his retired pay was not reduced to cover SBP premiums. His request for waiver of the resulting debt is denied.

DECISION

This is in response to an appeal of a Claims Group settlement which denied the request of Colonel Alfred F. Streck, USAFR (Retired), for waiver of a debt which arose when the Defense Finance and Accounting Service (DFAS), Denver Center, failed to deduct Survivor Benefit Plan (SBP) premiums from his retired pay. For the reasons presented below, we affirm the Claims Group's denial.

When Colonel Streck qualified for reserve retired pay in 1979, he elected full SBP coverage for his spouse. He began receiving retired pay in January 1986. Through administrative error DFAS did not initiate SBP deductions from his pay. The error was discovered when Colonel Streck called DFAS to ask a question about his SBP coverage in February 1992. DFAS then determined that he owed SBP premiums for the period from February 1986 through March 1992 in the amount of \$10,556.12.

The waiver statute, 10 U.S.C. § 2774, provides that the Comptroller General may waive a claim of the United States arising out of an erroneous payment to a service member if collection would be against equity and good conscience and not in the best interest of the United States. Waiver authority may not be exercised if there is any indication of fraud, misrepresentation, fault, or lack of good faith on the part of the member.

The word "fault" as used in 10 U.S.C. § 2774 has been interpreted by this Office to include more than a proven act

or omission by the member. "Fault" is considered to exist if in light of all the facts it is determined that the member should have known or suspected that an error existed and taken action to have it corrected.

In the present situation, before Colonel Streck began receiving retired pay, he was told the approximate amount of his gross retired pay. When that amount was not reduced to cover his SBP premiums, he should have questioned the net amount of his retired pay. While Colonel Streck argues that he believed the SBP premiums were being deducted from his retired pay without notation on his earnings statement, he had a duty to verify that that was the case. Under those circumstances Colonel Streck was at fault for not determining the correct net amount of his retired pay. Major Kenneth C. Krenek, USAF (Retired), B-251519, March 18, 1993.

In addition we note that once a member has made the election to participate in the SBP, participation is irrevocable and cannot be waived by the member. See, 10 U.S.C. § 1448. Thus, even though due to administrative error deductions were not being made from his retired pay, Colonel Streck benefitted from continued participation in the program. Under similar circumstances, we have held that it is not against equity and good conscience to require an employee to pay for a benefit received or protection provided. Frederick D. Crawford, 62 Comp. Gen. 608 (1983). Moreover, we have held that where the required deductions to cover the cost of the annuity were not made from the member's retired pay, the annuity is to be reduced or withheld to make up any amount due. Brigadier General Fred A. Treyz, USAF, Retired, 65 Comp. Gen. 134 (1985).

Accordingly, Colonel Streck's waiver request is denied, and the Claims Group's determination is affirmed.

James F. Hinchman
General Counsel