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Vickers



Comptroller General  
of the United States

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Washington, D.C. 20548

## Decision

**Matter of:** Roberta Bright

**File:** B-257180

**Date:** September 29, 1994

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### DIGEST

Claimant who married service member following his retirement is not entitled to widow's Survivor Benefit Plan annuity because retired member died before first anniversary and member's adoption of spouse's child prior to death did not constitute "issue of that marriage" to satisfy the requirement of 10 U.S.C. § 1447(3).

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### DECISION

Mrs. Roberta Bright has submitted a claim for the Survivor Benefit Plan (SBP) annuity of her late husband, Master Chief Hulon Bright, USN (Retired) (Deceased). For the reasons which follow, we find she is not entitled to the annuity.

Master Chief Bright retired on October 1, 1986. On June 14, 1992, he married Roberta and made an SBP election for spouse only coverage with the spousal coverage effective July 1, 1993, 1 year from the date of his marriage.<sup>1</sup> On November 9, 1992, Master Chief Bright adopted Joseph John Hall, age 9, in proceedings in the Family Court of Charleston County, South Carolina. The child's name was changed to Bright at that time. Master Chief Bright died on February 27, 1993.

The Defense Finance and Accounting Service, Cleveland Center, denied Mrs. Bright's claim for a survivor annuity because Master Chief Bright died within 1 year of the marriage and refunded the collected SBP costs to Mrs. Bright.

Under the SBP, the widow of a participating member must come within the definition of widow in the statute in order to

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<sup>1</sup>While there is a letter from DFAS, Cleveland, dated September 22, 1992, acknowledging Bright's election which shows he selected spouse and child coverage, Bright's original SBP election form shows spouse only coverage.

receive an annuity. Section 1447(3) of title 10, United States Code, defines "widow" as the surviving wife of a person who, if not married to the person at the time he became eligible for retired or retainer pay, was married to him for at least 1 year immediately before his death or was the mother of issue of that marriage. Since Mrs. Bright was married to the member for less than 1 year prior to his death, she does not meet this test. She qualifies only if the adoption of her son by Master Chief Bright satisfies the requirement that she be the mother of issue of the marriage.

Mrs. Bright argues, through her attorney, that since there is no definition of the term "issue" in the Survivor Benefit Plan and it is generally recognized that there is no body of Federal domestic relations law, our Office, as we have in the past, should resolve the question of personal status by referring to relevant State law. Kimberly Lee Hall, 67 Comp. Gen. 138 (1987) and 54 Comp. Gen. 858 (1975).

South Carolina law defines "issue" of a person to mean all lineal descendants whether natural or adoptive of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent contained in the South Carolina Code. See Section 62-1-201(21) of the South Carolina Probate Code. This definition indicates that under South Carolina law, an adopted child has the same rights of inheritance as a natural child. Here, however, the issue is not one of inheritance. The question is not whether the child could receive an annuity, which it clearly could since adopted children are included in the definition of "dependent child". 10 U.S.C. § 1447(5)(C). Instead the issue is whether the adoption brings the widow within the statutory definition governing the SBP. We view this distinction as critical.

The term "widow" is defined as it is under the SBP to avoid last minute, "deathbed marriages" of members which would automatically entitle the surviving spouse to an immediate annuity. This objective is achieved by requiring (a) that post-retirement marriages last a year or (b) that such marriages produce "issue" rather than involve "acquisition of a dependent child" (as used elsewhere in the SBP) before eligibility for the surviving spouse is established. Furthermore, it appears that since Congress so comprehensively defined "child" in the statute, it would have used that term rather than "issue" if they intended that a person meeting the definition "child," i.e., an adopted child, would qualify the widow to receive the annuity.

Moreover, we note that the Secretary of Defense under the authority of 10 U.S.C. § 1455 has issued regulations regarding this matter. The Department of Defense Financial

Management Regulation, volume 7, part B, paragraph 90301a(4) states that the spouse of a member such as here becomes eligible upon the first anniversary of the marriage or upon the date of birth of a child of that marriage.

Mrs. Bright's attorney cites Chapter 8, paragraph g(3) of the Navy Guide for Retired Personnel and Their Families, dated March 1, 1992, for its statement that a widower includes a surviving spouse of a deceased retiree who:

"(3) married the retiree after he/she was retired, was married to him/her when he/she died, but was married to him/her for less than one year immediately before his/her death, provided he/she is the parent of a living child born or adopted during that marriage." (Emphasis supplied.)

However, the cover sheet of the Navy's guide states that the publication is generalized to cover common situations and should not be cited for authority in specific actions. Instead, actions should be properly based on the applicable laws and regulations. The above cited Secretarial regulation in referring to birth of a child takes precedence over the quoted Guide.

Accordingly, we find that the term "issue", as used in 10 U.S.C. § 1447(3), means a child born of the marriage, not an adopted child, and Mrs. Bright's claim may not be allowed.

*for* *Sagan Egan*  
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