DIGEST - L- Mil

DECISION



THE COMPTROLLER GENERAL OF THE UNITED STATES D

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WASHINGTON, D.C. 20548

FILE: 8-185711

DATE: MAR 3 1 1976

MATTER OF: Mrs.

DIGEST: In a case where erroncous overpayments of an annuity under Survivor Benefit Plan are made to newber's widow and there is a showing of no fault by widow and that recovery would result in a financial hardship to her, waiver under 10 U.S.C. 1453 may be granted since collection in the circumstances would be against equity and good conscience.

This action is in response to a letter dated October 20, 1975 (file reference FINCM-T (Retired) , with enclosures, from the Acting Commanding Officer, United States Army Finance and Accounting Center, recommanding waiver of recovery of \$1,055.79, representing annuity payments erroneously paid under the Survivor Benefit Plan (SEP) to Mrs. , widow of the late Master Sergeant , who died on September 3, 1974.

According to the submission, the member elected to provide SBP coverage for his wife on August 1, 1973. An annuity payable to the widow was established affective September 4, 1974, in the amount of \$171.48, less Social Security reduction of \$51.93. Thus, the widow was considered entitled to annuity payments totaling \$466.25 for the period September 4, 1974, through December 31, 1974. In addition to that payment, a check for \$680,66 was erroneously issued to her for the same period creating an overpayment for that amount.

The submission also states that while the Social Security reduction of \$51.93 was used in the establishment of the SBP annuity rate, additional information concerning the member's military earnings was later received and the reduction rate was corrected to \$96.11. Because of the higher Social Security reduction which should have been applied to all SBP payments, an additional indebtedness of \$393.13 was determined to exist for the period September 4, 1974, through May 31, 1975. As a result, Mrs. ' indebtedness was increased to \$1,073.79. It is also reported that a total of \$18 has been collected from the widew's annuity against this indebtedness leaving a balance of \$1,053.79.

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Mrs. has advised the Army Finance and Accounting Center that her total income averages less than \$300 a month and her assets, consisting of an old home better than 70 years old, a 15-year-old small car and cash on hand, was valued at less than \$1,000. On the basis of the above, the Acting Commanding Officer of the Finance and Accounting Center recommends that recovery of the amount in question be waived under the provisions of 10 U.S.C. 1453;

"Pursuant to provisions of 10 U.S.C. 1453, recovery of an erroneously paid anauity under the SBP is not required if in the judgment of the Secretary concerned and the Comptroller General 'there has been no fault by the person to whom the amount was erroneously paid and recovery would be contrary to the purpose of this subchapter or against equity and good conscience."

Under the facts and circumstances of this case, Mrs. clearly appears to be without fault with regard to the erroneous payment of annuities which she received in good faith under the SBP. In view of her apparent limited financial means, it may be concluded that recovery would cause undue hardship on Mrs. contrary to the purpose of the Plan and against equity and good conscience.

Accordingly, we agree that recovery of the indebtedness due the United States in the amount of \$1,055.79, arising out of the overpayment of an SEP annuity to Mrs. , should be waived.

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R. F. Keller

Deputy] Comptroller General of the United States