



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Reconsideration of Technical Sergeant John T. Baker, USAF (Retired) (Deceased)

File: B-190617.2

Date: October 17, 1988

DIGEST

Based on our holding in Sarah E. Tweedy, B-226888, May 18, 1988, 67 Comp. Gen. _____, which overruled our prior decision herein, we now hold that Sergeant Baker's widow is entitled to a full unreduced Survivor Benefit Plan annuity based on her marriage to Sergeant Baker, even though she was also entitled to receive Dependency and Indemnity Compensation from the Veterans Administration based on her first marriage to another service member. Her claim was timely filed and is payable from the day following Sergeant Baker's death in 1977 for the remainder of her unremarried lifetime.

DECISION

In this decision we hold that Marie T. Baker, widow of Sergeant Baker, is entitled to an unreduced monthly Survivor Benefit Plan (SBP) annuity beginning February 15, 1977, for the remainder of her unremarried lifetime.

In the case of Technical Sergeant John T. Baker, USAF (Retired) (Deceased), B-190617, Feb. 16, 1978, we ruled that when a surviving spouse of an SBP participant is also entitled to Dependency and Indemnity Compensation (DIC) from the Veterans Administration, the SBP annuity must be reduced or eliminated under the provisions of 10 U.S.C. § 1450(c), even where the DIC entitlement is based on the survivor's marriage to another member who died of service-related causes.

In the recent case of Croteau v. United States, 823 F.2d 539 (Fed. Cir. 1987), a situation parallel to that in Baker was before the Court of Appeals for the Federal Circuit. The court in that case considered and specifically rejected the holding in Baker and ruled that the widow of two service members was entitled to a full unreduced SBP annuity based on her second marriage, even though she was also entitled to

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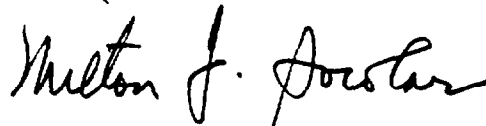
receive DIC from the Veterans Administration on the basis of her first marriage.

Subsequent to that ruling, we held in Sarah E. Tweedy, B-226888, May 18, 1988, 67 Comp. Gen. _____, that a widow was entitled to the payment of an unreduced SBP annuity based on the ruling in Croteau, and we stated:

" . . . we have decided to follow the Court of Appeals' judgment in the Croteau case, and we now overrule our prior contrary decision in Technical Sergeant John T. Baker, USAF (Retired) (Deceased), B-190617, supra."

We further held in Tweedy, supra, that, since the judgment in Croteau constituted an original construction of the law, the ruling in that case should be applied retroactively as well as prospectively, subject only to the 6-year statute of limitations under 31 U.S.C. § 3702(b). We concluded in Tweedy that retroactive payments, including all adjustments, due SBP annuitants incident to Croteau may be allowed, but only for the 6 years prior to the date such annuitant's accounts were adjusted by the respective finance centers, "in the absence of their submission of signed claims to our Office in the meantime."

With regard to Marie T. Baker, we note that her claim came before this Office shortly after Sergeant Baker's death on February 14, 1977, and, thus, was received within the 6-year period prescribed by 31 U.S.C. § 3702(b). Therefore, Mrs. Baker is entitled to reinstatement of an unreduced monthly SBP annuity beginning February 15, 1977, for the remainder of her unremarried lifetime, subject to adjustment for any amounts refunded to her pursuant to our 1978 decision.^{1/} Since Mrs. Baker died on May 4, 1988, as Sergeant Baker's unmarried widow, payment should be made to her survivor(s) or her estate.



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^{1/} Under 10 U.S.C. § 1450(e) if no SBP annuity is payable, amounts deducted from the retired or retainer pay of the deceased shall be refunded to the widow or widower.