

117647

DECISION20963
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548*Schneider*

FILE: B-203380

DATE: March 2, 1982

MATTER OF: Mary J. Hogsed

DIGEST: When upon a service member's death the surviving spouse is eligible for both a Survivor Benefit Plan (SBP) annuity and Veterans Administration Dependency and Indemnity Compensation (DIC), the amount of the SBP payment is reduced by the amount of the DIC and a corresponding refund of the member's SBP contributions is due the spouse. If DIC entitlement is subsequently lost due to remarriage of the spouse, SBP may be reinstated provided the refund is returned. However, no refund is payable once the benefit of the plan has been derived. Accordingly, when a refund is repaid and SBP payments are thereafter made, no additional refund is authorized should the spouse again become eligible for DIC.

This action is in response to a letter of May 18, 1981, from the Special Disbursing Agent, United States Army Finance and Accounting Center, requesting an advance decision whether Survivor Benefit Plan contributions previously made by a deceased member of the uniformed services may be refunded to his surviving spouse under the circumstances described in the letter. As is explained below, since in this case the widow did receive, for a time, Survivor Benefit Plans annuity payments, she may not receive the refund of the member's contributions to the Plan.

The request has been assigned submission number DO-A-1363 by the Department of Defense Military Pay and Allowance Committee.

The facts are as follows. Specialist Five Harold W. Hogsed retired on November 1, 1965, after more than 22 years of active service in the Army. In 1972 he elected to provide an annuity for his spouse, Mrs. Mary J. Hogsed, under the Survivor Benefit Plan (SBP), 10 U.S. Code § 1447-1455. Accordingly, Mr. Hogsed's retired pay was reduced by the appropriate amount to cover his cost of participation in the Plan. Mr. Hogsed died on August 5, 1977. The total

cost to Mr. Hogsed was \$482.82 representing the deductions from his retired pay from December 1, 1972 through August 5, 1977.

An annuity was established for Mrs. Hogsed in the amount of \$194.73 per month, effective August 6, 1977. The Veterans Administration also determined her to be eligible to receive Dependency and Indemnity Compensation (DIC) in the amount of \$300.00 per month effective August 1, 1977, pursuant to the provisions of 38 U.S.C. § 411(a). As a result of the widow's entitlement to DIC payments in excess of her SBP annuity entitlement, no SBP payments were authorized. This is because under 10 U.S.C. 1450(c) when a surviving spouse is eligible for DIC, the amount of the SBP payment is to be reduced by a corresponding amount or eliminated entirely if the amount of DIC is equal to or greater than the annuity payment. However, 10 U.S.C. 1450(e) provides that if no SBP annuity is payable because of a DIC entitlement, any amounts deducted from the retired pay of the deceased member as the cost of participation in the SBP shall be refunded to the surviving spouse. Accordingly, a refund in the amount of \$482.82 was paid to Mrs. Hogsed.

On October 16, 1978, Mrs. Hogsed remarried at the age of 61 years thereby terminating her entitlement to DIC. Under a 1978 amendment to the law governing SBP entitlements, loss of entitlement to DIC because of remarriage on or after age 60 entitles the beneficiary to reinstatement of SBP payments, readjusted to the amount which would have been in effect upon the date of remarriage had the beneficiary never received DIC. Reinstatement of adjusted SBP benefits is contingent, however, upon repayment of previously refunded premium contributions. 10 U.S.C. § 1450(k)(Supp. III 1979). Mrs. Hogsed repaid the \$482.82 refund and her annuity was reestablished. Her payments continued until Mrs. Hogsed notified the Army Finance and Accounting Center that, as a result of her divorce on March 12, 1980, she had resumed DIC entitlement and was again receiving those benefits.

The question presented for our analysis involves the issue of refunded SBP contributions under subsection 1450(e). Specifically, now that Mrs. Hogsed has become eligible once

again for DIC, is she entitled to a second refund of all or part of the member's contributions which she had repaid at the time of her second marriage in order to reactivate her eligibility for SBP annuity payments?

Neither the language of the SBP provisions nor the legislative histories of the original SBP law and its amendments provide specific guidance on the issue presented in this case. We have found no indication that Congress ever considered the question of refunds in cases involving reinstatement of DIC payments upon dissolution of the spouse's later marriage. However, it seems apparent that the purpose of the refund provision was to compensate beneficiaries for SBP deductions made from the retired pay of members who intended to provide annuities which are never realized because of concurrent entitlement to DIC. Where, as here, the beneficiary receives SBP payments for a period of time during which DIC entitlement has been terminated, the benefit of the annuity has in fact been derived. As we understand it, the refund provision was established as an equitable compensation measure and was not intended to confer refunds to spouses who have received SBP coverage. In the absence of contrary evidence of congressional intent, we conclude that the refund provision may not be invoked by a spouse who has received annuity payments under the Plan; therefore, a second refund may not be allowed in this case.

In support of this conclusion, see 56 Comp. Gen. 482, 486 (1977) where we held that where DIC is awarded at a date later than the date of the member's death, and is not retroactive to the date of death, no refund would be due for SBP contributions under subsection 1450(e). We held that unless the beneficiary was entitled to DIC at the time of death, no refund would be payable. Even though the decision did not specifically address the issue, it does provide support for the proposition that SBP refunds are to be made only when the benefit of the annuity never comes to fruition. In other words, regardless of the circumstances causing a delay or interruption of DIC benefits, if the delay or interruption results in entitlement to receive SBP annuity payments, a subsequent reinstatement of DIC and corresponding SBP reduction will not entitle the beneficiary to a refund.

B-203380

In sum, Mrs. Hogsed may not be paid the \$482.82 she claims based on the reinstatement of her DIC payments in March 1980. Of course, her eligibility for SBP is not permanently lost; should she later lose eligibility for DIC (due to remarriage, for example), SBP eligibility would resume.

for Milton J. Aroskar
Comptroller General
of the United States