

B-253900

November 4, 1993

The Honorable James A. Leach
Member, United States
House of Representatives
209 W. Fourth Street
Davenport, IA 52801-1307

Dear Mr. Leach:

This is in further response to your letter of June 18, 1993, forwarding correspondence from Major (Retired) regarding his participation in the Survivor Benefit Plan (SBP).

Information included with Major ' correspondence shows that on July 22, 1983, he completed and submitted DD Form 1883, Survivor Benefit Plan Election Certificate, indicating that he wished to enroll in the SBP and selecting full spouse coverage. Deductions were to begin when he retired and reached the age of 60 on October 13, 1986, under the Reserve Component SBP. It now appears that the completed form was placed in Major file at the Defense Finance and Accounting Service (DFAS) but that he was not entered in the SBP program and that there was no reduction in his retired pay beginning in 1986.

In March 1993, when Major made inquiry during an open season for the SBP, he was informed that he did not have SBP coverage. A subsequent search found that he had enrolled in the plan but that premiums had not been deducted from his retired pay. Accordingly, DFAS found that he was indebted in the amount of \$2,255.96, the amount of the premiums that had not been deducted for the intervening 7 years.

Major has objected that he should have to pay these back premiums, which are being offset against his retired pay, because of the failure of the DFAS to properly enroll him in the SBP. He claims that if he had died without being enrolled in the Plan he would not have been covered and his wife would have received no annuity.

While it is unfortunate that Major was not timely entered into the SBP and the appropriate retired pay reductions to cover the cost of the SBP were not taken in a timely manner, there is no basis to waive the debt and Major is liable for the past due premiums.

The SBP was designed on an actuarial basis as a contributory plan. That is, in return for protection of their dependents upon the retiree's deaths, the retirees contribute premiums in the form of deductions from their retired pay. Where the required deductions to cover the cost of the annuity were not made from a member's retired pay, the member must pay the costs since spouse coverage under the Plan did exist. Lieutenant Colonel USAF (Retired), B-252123, Aug. 4, 1993. Additionally, if the member dies when costs have not been deducted the annuity must be reduced or withheld to make up any amount due. 54 Comp. Gen. 493 (1974) and 65 Comp. Gen 134 (1985). Thus, had Major died without having been enrolled in the Plan, his widow would nevertheless have qualified for an annuity reduced in an amount equal to uncollected premiums.

We have enclosed copies of the decisions cited above. We hope this is of assistance to you in responding to your constituent.

Sincerely yours,

James F. Hinchman
General Counsel

Enclosures