



Comptroller General
of the United States
Washington, D.C. 20548

14731C

Decision

Matter of: Nawanna Driggers--Survivor Benefit Plan--
Former Spouse Coverage

File: B-244101

Date: August 3, 1992

DIGEST

Where final divorce decree stated that member's former spouse was to be designated beneficiary under Survivor Benefit Plan and both member and former spouse, under deemed election provisions, fail to take action to effect such election within 1-year period after divorce, subsequent attempted election is without effect. Also, court ordered election under 10 U.S.C. § 1450(f)(4) is without effect to extend or open new 1-year window for such election.

DECISION

This action is in response to a submission from the Defense Finance and Accounting Service (DFAS), Denver Center, concerning the entitlement of Nawanna Driggers to be designated as the former spouse beneficiary under the Survivor Benefit Plan (SBP) of Staff Sergeant Fate R. Driggers, USAF, Retired. The issue to be resolved is whether a court order reiterating an earlier divorce decree requirement that Sergeant Driggers provide former spouse coverage for Nawanna Driggers establishes a new statutory 1-year filing period for election of coverage or whether the order is without effect because it does not establish a new filing period.

We find Nawanna Driggers not entitled to be designated the SBP beneficiary.

Sergeant Driggers retired from the Air Force on July 31, 1976 and elected to participate in the SBP. Sergeant and Mrs. Driggers were divorced on December 31, 1985, pursuant to a Final Judgment of Dissolution of Marriage issued by the Superior Court of Santa Clara County, California. The divorce decree incorporated Sergeant Driggers' earlier marital settlement agreement to continue Nawanna Driggers as his SBP beneficiary pending their divorce and to designate her as a person with an insurable interest in his life following their divorce, as required at the time of the marital settlement agreement in order for a former spouse to qualify for a SBP annuity.

In February 1986, however, Sergeant Driggers notified DFAS of his divorce and requested that his former spouse be removed as beneficiary under the SBP. DFAS honored the request and refunded the SBP premiums that had been withheld since the date of the divorce. Later, on August 8, 1988, Sergeant Driggers' attorney requested that former spouse SBP coverage be established for Nawanna Driggers, which request was denied as untimely by DFAS because it was not filed within 1 year of the divorce decree, as required by the SBP law. Finally, on November 27, 1989, the Superior Court issued Findings and Order after Hearing which found that Sergeant Driggers had failed to provide SBP coverage for Nawanna Driggers in accordance with the 1985 divorce decree and that Nawanna Driggers was qualified to request a deemed election as a former spouse.

The DFAS submission questions whether the 1989 court order constitutes a "modification" of a previous court order as that term is used in 10 U.S.C. § 1447(8) so as to trigger a new 1 year filing requirement under the SBP law.

The SBP program, 10 U.S.C. §§ 1447-1455, was established in 1972 as an income maintenance plan for the dependents of deceased members of the uniformed services. Upon divorce, a retired member's former spouse lost SBP annuity coverage. Subsequently, in 1983 Congress amended the SBP law so that a retiree could voluntarily elect coverage for a former spouse. In 1984, Pub. L. No. 98-525 further amended the law to provide a remedy in cases where a SBP participant enters into a voluntary written agreement to elect to provide an annuity to a former spouse incident to divorce proceedings, but then fails or refuses to make the election. The amendment provided that, upon a timely request from the former spouse in such cases, the member "shall be deemed to have made such an election." 10 U.S.C. § 1450(f)(3). The amendment also provided that a request for a deemed election must be received by the Secretary concerned within 1 year of the court action or October 1, 1985, whichever date is later.

In 1986, the law was further amended to provide that a court could order a member to elect coverage for a former spouse. 10 U.S.C. § 1450(f)(4). The "deemed election" provisions were also amended at the same time to allow a deemed election by a former spouse when a member who was required by a court order to make such an election failed to do so. 10 U.S.C. § 1450(f)(3)(A). These amendments pertained to orders issued after November 14, 1986. See Pub. L. No. 99-661, § 641, 100 Stat. 3816, 3885 (1986).

The term "court order", as used in the SBP law, means

"a court's final decree of divorce, dissolution, or annulment or a court ordered, ratified, or approved property settlement incident to such a decree (including a final decree modifying the terms of a previously issued decree of divorce, dissolution, or annulment or of a court ordered, ratified or approved property settlement agreement incident to such previously issued decree)."
10 U.S.C. § 1447(8).

In our view, the court order involved here is not the kind the statute required to start a new 1-year period for the filing of a deemed election by a former spouse.

The 1989 decree merely restated the previous agreement regarding SBP coverage for Nawanna Driggers and made no change in the prior voluntary agreement of Sergeant Driggers to designate Nawanna Driggers as beneficiary. The statute requires that a request for a deemed election pursuant to a court order be made within 1 year of the order. This limitation reflects Congress's judgment of the proper balance between the need to provide former spouses adequate time after issuance of a court order to request a deemed election and the need to require that requests be made within a reasonable time in the interest of sound and efficient program administration.

In our view, the definition of a "court order" includes modification of a previous order to make clear that the substantive obligation to elect former spouse coverage may be imposed as a change to an existing order. What matters is the substantive obligation to elect coverage, and the 1-year period for a request to the Secretary begins when a court order initially imposes that obligation on a member.

The 1989 order merely restates the previous provision regarding SBP coverage; it imposes no new obligation on Sergeant Driggers regarding that coverage. Therefore, the order did not begin a new 1-year period during which a request for a deemed election could have been filed, and Nawanna Driggers is not entitled to SBP coverage.

The DFAS submission requests our comments on Peggy Wimberly Minier, B-232319, March 23, 1990 and Lieutenant Colonel Warren L. Early, B-226563, Mar. 2, 1990. The cases involved the issuance and the possibility of issuance of a court order issued more than 1 year after the final divorce decree. In Minier, we concluded that a timely deemed election based on a court order which ordered election of SBP benefits for a former spouse after the law was modified to allow court ordered deemed elections was proper. We

reasoned that the change in the law to allow courts to order deemed elections, not in effect when the original order was issued, should serve to provide a new 1-year filing deadline. The original attempted election failed to include a written agreement and was based on oral statements. Therefore, the original attempt to give coverage to the former spouse was flawed and she had no right to the coverage. When the SBP law changed to allow court ordered deemed elections, the former spouse was provided a right she did not previously have.

Likewise, in Early the member had refused to voluntarily elect SBP coverage for his former spouse, as ordered by the original divorce decree and as required by the SBP law at that time. We noted that the possible issuance of a subsequent modifying decree, issued after the amendment to the SBP law that allowed court ordered elections, may provide a right in the former spouse that did not exist at the time of the original divorce. Clearly in these situations, a 1-year period would commence upon issuance of the modifying order.

Accordingly, we find Nawanna Driggers not entitled to be named the SBP beneficiary of Sergeant Driggers.

for Milton J. Rosler
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of the United States