

DECISION



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

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FILE: B-185545

DATE: MAR 10 1976

MATTER OF: Mrs.

DIGEST: Overpayments resulting from erroneous annuity payments under Survivor Benefit Plan made to member's widow because of failure to consider Veterans Administration payments should be waived under 10 U.S.C. 1453 since the widow was without fault and recovery would be contrary to purpose of the Plan and, therefore, against equity and good conscience. See 54 Comp. Gen. 249 (1974).

This action is in response to a letter dated December 19, 1974 (file reference FINCM-T (Retired) (Deceased)), with enclosures, from the Acting Commander, United States Army Finance and Accounting Center, recommending waiver of recovery of \$792.23, representing annuity payments erroneously paid under the Survivor Benefit Plan (SBP), to Mrs. , widow of the late Sergeant Major who died January 23, 1974.

From the record, it appears that Sergeant , who retired on July 15, 1966, elected to participate in the SBP on November 4, 1972. Upon his death an annuity of \$251.14 was established effective January 24, 1974, in favor of his widow.

According to the submission, notification was received from the Veterans Administration (VA) on May 29, 1974, that Mrs. was in receipt of Dependency and Indemnity Compensation (DIC) in the amount of \$251 a month, effective January 1, 1974. Thereafter, the SBP annuity was reduced by the amount of DIC effective June 1, 1974. However, Mrs. had been overpaid \$1,062.56 through May 31, 1974. A partial cost refund of \$270.33, applied to the overpayment, reduced the overpayment to \$792.23.

The Survivor Benefit Plan (Public Law 92-425, ⁸⁰⁰¹ approved September 21, 1972) provides for reduction of the annuity by the amount of DIC awarded by the VA. A partial SBP cost refund is ^{10 USC 1421}

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due the widow of the member if her annuity is reduced by DIC, as was done here.

By letter of July 15, 1974, Mrs. _____ advised the Finance Center of her poor financial situation, transmitted a check for \$400, and asked for "forgiveness" [waiver] of the indebtedness in her case, as is provided for by 10 U.S.C. 1453 (Supp. II, 1972).

Mrs. _____ has advised the Finance Center of her limited financial situation, and also requested that waiver be applied to the \$400 she transmitted with her request for waiver. In submitting the matter here, it is administratively recommended that recovery of the overpayment of \$792.23 be waived.

Pursuant to the provisions of 10 U.S.C. 1453, recovery of an erroneous payment of an SBP annuity 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 purposes of this subchapter or against equity and good conscience."

In 54 Comp. Gen. 249 (1974), we held that something more than freedom from fault must be shown before a basis exists for exercising the judgment as to whether the collection of a particular overpayment, or erroneous payment under the SBP should be waived. The view was expressed that unless it can be established that collection of the overpayment would work an undue hardship, or some other reason can be shown as to why collection should not be made, no proper basis exists for the exercise of the waiver authority.

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 concur in the recommendation that recovery of the erroneously made payments in the amount of \$792.23 should

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be waived. This amount includes the \$400 transmitted by Mrs. with her request for waiver, and is included in this waiver action. Compare B-183863, July 18, 1975.

R. F. Keller

Deputy Comptroller General
of the United States