

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D. C. 20548

985

FILE: B-184250

DATE: NOV 26 1975

MATTER OF: Mrs.

DIGEST: Overpayments resulting from erroneous annuity payments under the Survivor Benefit Plan made to a member's widow should be waived under 10 U.S.C. 1453 (Supp. 1972) where the overpayments resulted from administrative error, the widow was without fault and recovery would be contrary to the purpose of the Plan and against equity and good conscience.

This action is in reponse to a letter dated January 16, 1975
(file reference FINCM-T Retired)

(Deceased), with enclosures, from the Commanding Officer, United States Army Finance and Accounting Center, recommending waiver of recovery of \$435.61 representing an overpayment of annuity payments erroneously paid under the Survivor Benefit Plan (SBP), 10 U.S.C. 1447-1455 (Supp. II, 1972), in the case of Mrs. , as surviving spouse of the late Specialist

From the record, it appears that Specialist , who retired on July 31, 1964, elected to participate in the SBP on December 10, 1972. Upon his death on March 1, 1973, Mrs. became eligible to receive an annuity under the SBP. Since Mrs. was also eligible for Social Security benefits at that time, the SBP annuity to which she was entitled should have been reduced by the amount of the Social Security benefit earned by the member as a result of his military service after December 31, 1956.

According to the submission, an SBP annuity of \$116.40 was established effective March 2, 1973, with an estimated Social Security offset of \$76.64 monthly. Effective March 1, 1974, her Social Security offset increased to \$82 and on June 1, 1974, to \$85.07. However, verification of the member's military earnings shows the reduction amount should have been \$100.16, effective March 2, 1973; \$107.17, on March 1, 1974, and \$111.21, from June 1, 1974, through the current date of the submission. As a result, it has been established that the widow has been overpaid \$435.61.

By letter dated August 15, 1974, the Army Finance and Accounting Center notified Mrs. of the nature and cause of the overpayment and advised her that the entire amount of \$435.61 was due and payable within 30 days and that if she were unable to refund the full amount, her SBP annuity entitlement of \$19.45 would be used to liquidate the indebtedness.

B-184250

The Army Finance and Accounting Center reports that there is no indication of fraud, lack of good faith, or misrepresentation on the part of Mrs. [redacted] or any other party having an interest in obtaining a waiver of recovery of the overpayment. Additionally, the file indicates that Mrs. [redacted] income is derived from three sources, Social Security, Veterans Administration pension and SBP, which totals less than \$300 a month and that her normal expenses are approximately the same. For these reasons, the Army Finance and Accounting Center recommends waiver of recovery of the erroneous overpayments.

Since Specialist [redacted] was retired prior to the effective date of the SBP, he was authorized to participate in the Plan by virtue of subsection 3(b) of Public Law 92-425, enacted September 21, 1972, 86 Stat. 706, 711. Subsection 3(f) of Public Law 92-425 makes section 1453 of title 10, United States Code, applicable to persons covered by section 3. 10 USC Sec. 1431

Section 1453 of title 10, United States Code, provides in part that recovery of any amount erroneously paid 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 the SBP or against equity and good conscience.

In 35 Comp. Gen. 401 (1956), 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 particular overpayment or erroneous payment under the Uniformed Services Contingency Option Act of 1953 (now the Retired Serviceman's Family Protection Plan (RSFPP)), should be waived. The view was expressed by this Office that unless it could be established that collection of the overpayment would work an undue hardship, or some other reason could be shown as to why collection should not be made, no proper basis exists for the exercise of the waiver authority.

Due to the similarity between the SBP and the RSFPP and the waiver authority contained therein, this Office held in 54 Comp. Gen. 249 (1974), that the ruling in 35 Comp. Gen. 401, supra, is for application under the provisions of 10 U.S.C. 1453.

In the present case, there appears to be no question that Mrs. [redacted] received the SBP annuity payments in good faith and is entirely without fault in the matter. Since the records show that she has limited financial means, it would appear that

B-184250

recovery would cause undue hardship and would be contrary to the purpose of the SBP and against equity and good conscience. Accordingly, we concur in the recommendation that recovery of the overpayment should be waived.

R. V. KILLIAN

~~Deputy~~ Comptroller General
of the United States