



FILE: B-184530

DATE: NOV 26 1975

MATTER OF: Mrs.

DIGEST: Overpayment resulting from erroneous annuity payment made under section 4 of Pub. L. 92-425 which provides for a minimum income guarantee for certain widows of former retired members of the uniformed services may not be considered for waiver pursuant to 10 U.S.C. 1453 since that section by its terms is applicable only to subchapter II of chapter 73 of title 10, United States Code, and section 3 of Pub. L. 92-425. See B-181954, May 21, 1975.

This action is in response to a letter with enclosures, from the Commanding Officer, United States Army Finance and Accounting Center (file reference FINCH-T,

(Retired) (Deceased)), recommending waiver of recovery of \$377.34, representing annuity payments erroneously paid under section 4 of the act of September 21, 1972, Public Law 92-425, 86 Stat. 706, 712, to Mrs. , widow of the late Staff Sergeant , who died March 20, 1973. *10 USC Sec. 1431*

According to the submission, Mrs. applied for a minimum income annuity under the provisions of section 4 of Public Law 92-425, *supra*. Under this provision, the annuity to which a widow is entitled is an amount equal to the difference between her annual income as determined by the Veterans Administration (VA) and \$1,400.

In this respect, information submitted by the VA to the Army indicates that Mrs. was entitled to receive a section 4 annuity at the annual rate of \$807, or \$67.25 monthly, for the period March 21, 1973, through December 31, 1973, and annuity payments were properly paid for such period.

The submission further indicates that Mrs. expected income for VA purposes for the calendar year 1974 would be \$1,072 and therefore the annuity payable, beginning January 1, 1974, should have been reduced to an annual rate of \$328 or \$27.33 monthly. However, due to a clerical error, the annuity was paid for January through March 1974 at the maximum rate allowable under

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the minimum income provisions, or \$116.67 monthly. Corrective action was taken in April 1974 to reduce the annuity to \$27.33 and Mrs. [redacted] was advised of the overpayment, at the monthly rate of \$89.34, for January through March 1974, a total of \$268.02.

It is reported that the Army requested the VA to verify Mrs. [redacted]'s entitlement to an annuity for the calendar year 1974 and on May 13, 1974, the VA stated that no entitlement to a minimum income annuity existed since her income for VA purposes was \$2,971 annually, which exceeded the \$1,400 limitation. It is reported that a revised letter of indebtedness was sent June 5, 1974, and after Mrs. [redacted] returned a check dated May 31, 1974, for \$24.33, it was determined that the amount of \$377.34 was due the United States for the period January 1, 1974, through April 30, 1974.

According to the submission, Mrs. [redacted] has been advised of the overpayment and she in turn has advised the Finance and Accounting Center that she is financially unable to repay the amount in question.

On the basis of that request, and under the circumstances of the overpayment to Mrs. [redacted], the Commanding Officer of the Army Finance and Accounting Center recommends that recovery of the amount in question be waived, citing 10 U.S.C. 1453 as authorizing waiver in her case.

In decision B-181954, May 21, 1975, which also involved overpayments of section 4 benefits, we carefully examined the legislative history of Public Law 92-425, supra, to determine whether the provisions of 10 U.S.C. 1453 were applicable to that section of the act. Following a detailed analysis of the matter, it was held that the waiver provisions of 10 U.S.C. 1453 were not for application in that case.

In view of the similarities between the two cases, we must conclude that waiver under authority of 10 U.S.C. 1453 may not be granted in Mrs. [redacted]'s case.

With regard to the above, the following statement was made in our May 21, 1975 decision, supra:

"\* \* \* it appears that any action in this case should be taken under the provisions of the Federal

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Claims Collection Act of 1966, 31 U.S.C. 951-953 (1970). In this regard, we note 4 CFR 104.3, promulgated pursuant to the above-cited authority, provides that the head of an agency or his designee may terminate collection activity when a determination of the debtor's inability pay is made based on the criteria set forth therein. Under the circumstances, we would not object to such action in this case."

We believe that such action would be equally appropriate in Mrs. case.

W. F. KELLER

Deputy

Comptroller General  
of the United States