

DECISION



DIGEST

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

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FEB 2 1973

FILE: E-184649

DATE:

MATTER OF: [REDACTED]

DIGEST: Overpayment resulting from erroneous annuity payments under Survivor Benefit Plan made to member's widow 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 July 30, 1975 (file reference [REDACTED] (Retired) [REDACTED] (Deceased)), with enclosures, from the Commanding Officer, United States Army Finance and Accounting Center, recommending waiver of recovery of \$6,080.88, representing annuity payments erroneously paid under the Survivor Benefit Plan (SBP), to [REDACTED] [REDACTED], widow of the late [REDACTED] who died March 9, 1973.

According to the submission, the member elected to provide SBP coverage for his wife on December 1, 1972, based on full retired pay. An annuity payable to the widow was established on October 1, 1973. Checks for \$1,190.62 and \$1,024.26, covering payments of \$321.79 a month for the period March 10, 1973, through June 30, 1973, and \$341.42 a month for the period July 1, 1973, through September 30, 1973, were mailed to the widow. The widow also received from the Veterans Administration, Dependency and Indemnity Compensation (DIC) payments in the amount of \$299 a month, effective March 1, 1973, and \$350 a month effective May 1, 1974. Notification of the DIC payments, however, was not received by the Army Finance Center until October 11, 1974.

According to the submission, the SBP annuity was not reduced by the amount of the monthly DIC payment until November 1, 1974. As a result, [REDACTED] was overpaid a total of \$6,933.42, through October 31, 1974. This amount was reduced by an actual SBP entitlement of \$737.12 and a cost refund of \$115.42, leaving a net overpayment of \$6,080.88.

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[REDACTED] has advised the Army Finance Center that her monthly income from all sources amounts to \$924.84 and that her fixed monthly expenses amount to \$820.50, leaving \$104.34 a month for clothing, gasoline and miscellaneous expenses that may arise.

On the basis of the foregoing, it is recommended in the submission that recovery of the amount in question be waived under the provisions of 10 U.S.C. 1453.

Pursuant to provisions of 10 U.S.C. 1453, recovery of an erroneously paid annuity under the SBP 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 purpose of this subchapter or against equity and good conscience."

Attention is directed to our ruling in 54 Comp. Gen. 249 (1974), in which 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 in that case that unless it can 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.

Under the facts and circumstances of this case, [REDACTED] 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 indicated limited financial means, it may be concluded that recovery would cause undue hardship on [REDACTED] 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 \$6,080.88 in this case should be waived.

R.F.KELLY

"Deputy" Comptroller General
of the United States

DEBT COLLECTIONS

Waiver

Military personnel
Dependents

Erroneous Survivor Benefit
Plan payments

PAY

Retired

Survivor Benefit Plan
Erroneous payments
Waived