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**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** Mattie M. Walker  
**File:** B-235873  
**Date:** March 23, 1990

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### **DIGEST**

To provide an annuity for his widow, a service member who retired before the Survivor Benefit Plan was enacted had to make an affirmative election of coverage for his spouse. Claimant was not listed on the election form filed by the service member and her claim for an annuity must therefore be denied. Amounts withheld from the member's retired pay as coverage costs should be paid to the eligible beneficiary under 10 U.S.C. 2771.

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### **DECISION**

This is in response to an appeal of a Claims Group determination regarding Mrs. Mattie M. Walker's entitlement to an annuity under the Survivor Benefit Plan (SBP), 10 U.S.C. §§ 1447-55. For the reasons presented below, she is not eligible to receive an annuity.

The record shows that Mattie Walker married Jim Walker in 1959, and that he retired from the Navy in 1963. When SBP was enacted in 1972, he elected spouse-only coverage and designated Catherine Walker as his spouse. Mattie Walker contends that she and Mr. Walker were never divorced. Mr. Walker died in 1988, and Mattie Walker has claimed an SBP annuity as his widow. Catherine Walker has not responded to inquiries made by the Navy.

In order to be eligible for an SBP annuity as a widow under 10 U.S.C. § 1450(a)(1), a claimant must meet the legal criteria of a widow, as defined in 10 U.S.C. § 1447(3). Section 1447(3) defines the term as follows:

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"(3) 'Widow' means the surviving wife of a person who, if not married to the person at the time he became eligible for retired or retainer pay --

(A) was married to him for at least one year immediately before his death; or

(B) is the mother of issue by that marriage."

Under the SBP, a retired member may provide an annuity for an eligible beneficiary to be paid following his or her death. The SBP was established by Public Law 92-425, September 21, 1972. Members retiring after enactment of the law are automatically covered under the SBP unless they specifically decline to participate. Members who were retired prior to enactment of the law, however, were required to make an affirmative election if they wished to participate. See Section 3(b) of Pub. L. No. 92-425 as amended by Pub. L. No. 93-155, Nov. 16, 1973, 87 Stat. 615.

Mr. Walker retired from the Navy in 1963. Thus, he was required to make an affirmative election if he wished to participate in the SBP. That he wished to participate is evidenced by his election of Catherine Walker to receive the annuity. This also demonstrates that he did not intend Mattie Walker to receive an annuity when he died. Staff Sergeant Roger A. Cline, USA, Retired (deceased), 57 Comp. Gen. 426 (1978). Accordingly, Mattie Walker is not entitled to the SBP annuity.

Matter Walker's contention that she was never divorced from Mr. Walker raises doubt concerning whether Catherine Walker is entitled to the SBP annuity since any marriage that Mr. Walker entered into subsequent to his marriage to Mattie Walker would be invalid if his first marriage had not been dissolved. Accordingly, if Catherine Walker makes a claim for the SBP annuity, she must demonstrate that Mr. Walker was divorced from Mattie Walker and that her marriage to Mr. Walker was valid.

Catherine Walker has not made a claim and in view of the time that has elapsed since Mr. Walker's death it appears unlikely that she will make a claim. Therefore, the costs of participating in the SBP which were deducted from Mr. Walker's retired pay should be refunded to the proper beneficiary under 10 U.S.C. § 2771. The record contains a copy of a form executed by Jim Walker on May 9, 1963, in which he designated Mattie Walker to receive any arrears of

retired pay due at his death. If this form is the most recent designation by Mr. Walker, the refund of SBP costs deducted from his retired pay may be made to Mattie Walker.

*Milton J. Fowler*

**Acting** Comptroller General  
of the United States