



United States  
General Accounting Office

## Memorandum

**Date:** August 24, 1990

**To:** Director, Claims Group, GGD - Sharon S. Green

**From:** General Counsel - James F. Hinchman *SE for J.H.*

**Subject:** Claim of Betty V. Fauset - B-238906 (Z-2862167)

This responds to your March 12, 1990, memorandum concerning Ms. Fauset's claim for the Survivor Benefit Plan (SBP) annuity provided by her late husband, Petty Officer First Class (PO1) Charles G. Fauset (Retired). We find that Ms. Fauset's claim should be honored.

The record you have provided shows that PO1 Fauset married Betty in 1951. They later separated, at some point before he retired from the Navy in 1967. On the basis of an SBP Election Certificate dated October 24, 1972, which bore PO1 Fauset's apparent signature, the Navy Finance Center (NFC) established an SBP account for spouse coverage, and PO1 Fauset's pay accordingly was reduced beginning March 1, 1973. Over the following years, NFC periodically notified PO1 Fauset of SBP costs and annuity amounts, which he never questioned.

In a September 11, 1981, letter to NFC, PO1 Fauset's attorney alleged that Ms. Fauset had forged PO1 Fauset's signature on the SBP election form. At NFC's invitation, PO1 Fauset executed and submitted an affidavit, dated March 9, 1982, in which he denied that the signature on the SBP election was his, stated his belief that his estranged wife had forged it, and requested termination of the election.

The Navy advised PO1 Fauset's attorney by letter of September 27, 1982, that NFC had no authority to adjudicate an allegation of forgery, and that the SBP election would remain in effect until set aside by lawful authority. In this



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respect, under the law in effect in October 1972 PO1 Fauset could have established an SBP annuity only through an affirmative election by him, which he could not unilaterally revoke. See 55 Comp. Gen. 158, 162 (1975).

The Navy further suggested that while PO1 Fauset could petition the Board for Correction of Naval Records to consider the issue, a civilian court actually would be the most appropriate forum for resolving the matter. The Navy continued taking deductions from PO1 Fauset's pay pending further action on his part; according to the record, however, PO1 Fauset did not pursue the matter.

PO1 Fauset and Betty were still legally married when he died on August 16, 1988. Ms. Fauset has claimed the SBP annuity, but NFC is withholding the annuity on the basis that doubt exists as to Ms. Fauset's entitlement due to the alleged forgery. The Navy has submitted the matter to our Office.

In our view, Ms. Fauset is entitled to the annuity. A review of the documentation and signatures in the record does not clearly establish that the signature on the SBP election form was not PO1 Fauset's. Further, we note that PO1 Fauset waited more than 8 years (from March 1973 to September 1981) after his retirement benefits were reduced before claiming that his signature was forged; throughout that period, according to the Navy, NFC notified him periodically of deductions from his pay for the survivor annuity. Finally, the record shows no further action at all by PO1 Fauset after he was advised in 1982 as to how he might pursue the matter.

In sum, the record establishes an apparent knowing acceptance on PO1 Fauset's part of the deduction action over an extended period, and no more than an unsupported allegation of forgery that was dropped shortly after it was made. Unless the Navy has some additional reason to question PO1 Fauset's signature, we see no basis to question the validity of the election certificate, so that Ms. Fauset is entitled to the annuity.