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DECISION



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

*Entitlement to Reinstatement of Survivor Benefit Plan Annuity
PLM II*

FILE: B-197602

DATE: September 12, 1980

MATTER OF: Jean B. Ford

DIGEST: Where the beneficiary of Survivor Benefit Plan annuity payments remarried before the age of 60 causing her annuity payments to be terminated and the second marriage was subsequently annulled, beneficiary is entitled to have her annuity payments reinstated effective as of the first day of the month in which the decree annulling her remarriage was rendered. See: 10 U.S.C. 1450(b) (1976).

The issue in this case is whether a Survivor Benefit Plan (SBP) beneficiary, whose annuity was terminated as a result of a subsequent marriage is entitled to have her SBP annuity reinstated effective from the date her subsequent marriage was decreed annulled or from the time the annuity was initially discontinued. For the reasons stated below, the annuitant is entitled to begin receiving her SBP annuity effective the first day of the month in which the decree annulling her remarriage was rendered.

The question was presented for an advance decision by the Chief, Accounting and Finance Division, Directorate of Resource Management, Headquarters Air Force Accounting and Finance Center, and has been assigned Air Force submission control No. DO-AF-1337 by the Department of Defense Military Pay and Allowance Committee.

Mrs. Jean B. Ford began receiving an SBP annuity after the death of her first husband, Technical Sergeant DeWayne G. Ford, USAF, retired, on July 17, 1976. On October 16, 1978, Mrs. Ford remarried and informed the Air Force of this on October 30, 1978. Her annuity was discontinued on March 31, 1979. The annuity should have been terminated in October 1978, and as a result an overpayment of the annuity was made. This marriage was subsequently annulled on September 10, 1979,

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by the District Court, 57th Judicial District, Bexar County, Texas. While there is no doubt that Mrs. Ford is a proper beneficiary to receive SBP annuity payments there is a question as to the effective date of the reinstatement.

The provisions relating to the SBP are found at 10 U.S.C. 1447, et seq. (1976). Under 10 U.S.C. 1450(b) an annuity payable to the beneficiary terminates effective as of the first day of the month in which eligibility is lost. Section 1450(b) also provides that an annuity for a widow shall be paid to the widow while the widow is living or if the widow remarries before reaching age 60, until the widow remarries. In the present case since Mrs. Ford remarried prior to reaching age 60, she was no longer entitled to receive her SBP as of October 1, 1978.

Section 1450(b) further provides for the resumption of the SBP annuity if the subsequent marriage is terminated by death, annulment, or divorce. If the subsequent marriage is terminated then payment of the annuity is resumed effective as of "the first day of the month in which the marriage is so terminated."

Although the above-cited language seems clear, the Accounting and Finance Officer asks whether Mrs. Ford's annuity payment is to be reinstated from October 1, 1978, the date the annuity payment was stopped due to her second marriage, or from September 1, 1979, the first day of the month in which her second marriage was terminated. The basis for the Air Force's question is our decision, 54 Comp. Gen. 600 (1975), in which we held that an annuity under the Retired Serviceman's Family Protection, 10 U.S.C. 1431 et seq., could be reinstated under certain state law effective the date the annuity payments were terminated by the marriage, since the annulment operated to void the marriage from its inception.

In other words the question is, does the legal significance of an annulment operate to void the

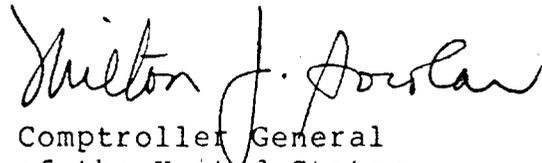
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marriage from its inception, for the purposes of the SBP notwithstanding the language of 10 U.S.C. 1450(b), to the contrary.

Under the RSFPP, a beneficiary loses entitlement to the annuity when he or she remarries. There is no provision under that Plan for the reinstatement of the annuity. Accordingly, it is necessary to examine the effect of an annulment under pertinent state law to establish whether an annuity can be reinstated and to determine the proper date to be used in reinstating the annuity.

Subsection 1450(b) of title 10, U.S. Code, specifically provides for the reinstatement of the annuity payments in the case of termination of the subsequent marriage and further provides that the annuity will be reinstated on the first day of the month in which the marriage is terminated. Thus, there is no need to examine state law in such cases since the Congress has specifically stated the conditions under which an annuity may be reinstated and the effective date of the reinstatement, whether the marriage is terminated by death, divorce, or annulment.

Accordingly, Mrs. Ford is entitled to have her SBP annuity reinstated effective September 1, 1979, the first day of the month in which her remarriage was decreed annulled. Her SBP account should be adjusted accordingly.



For the Comptroller General
of the United States