



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

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B-178270

June 26, 1973

The Honorable William P. Clements, Jr.
The Acting Secretary of Defense

Dear Mr. Clements:

We refer to letter dated March 20, 1973, of the Acting Assistant Secretary of Defense (Comptroller) requesting a decision on certain questions which have arisen under the Survivor Benefit Plan, 10 U.S.C. 1447-1455, concerning the circumstances under which an election may be made on behalf of a mentally incompetent member under the applicable insurable interest provisions in the circumstances pertaining to a particular case set forth in Department of Defense Military Pay and Allowances Committee Action No. 471.

There were enclosed copies of Committee Action No. 471 setting forth and discussing the following questions:

1. Before an election is made on behalf of an incompetent member for coverage of a natural person with an insurable interest, is evidence required of an insurable interest, in the form of any financial benefit derived from the retiree while alive?
2. Is coverage limited to one person or may more than one person be covered?
3. If coverage for only one person is authorized, on what basis is that person selected? Must that person also be the person who requested an election on behalf of the retiree?
4. If coverage for more than one person is authorized, on what basis is the cost determined and how is the annuity payable? In equal shares or in lump sum by one check?

Subsection 1448(b), title 10, U.S. Code, provides as follows:

(b) A person who is not married and does not have a dependent child when he becomes entitled to retired or retainer pay may elect to provide an annuity to a natural person with an insurable interest in that person.

Section 1449, title 10, U.S. Code, provides in pertinent part that:

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If a person to whom section 1443 of this title applies is determined to be mentally incompetent by medical officers of the armed forces concerned or of the Veterans' Administration, or by a court of competent jurisdiction, any election described in the first sentence of subsection (a), or subsection (b), of section 1443 of this title may be made on behalf of that person by the Secretary concerned. * * *

Subsection 1452(c), title 10, U.S. Code, states that:

(c) The retired or retainer pay of a person who has elected to provide an annuity to a person designated by him under section 1450(a)(3) of this title shall be reduced by 10 percent plus 5 percent for each full 5 years the individual designated is younger than that person. However, the total reduction may not exceed 40 percent.

Subsection 3(b) of the act of September 21, 1972, Public Law 92-425, 86 Stat. 711, which established the Survivor Benefit Plan, provides that any person who is entitled to retired or retainer pay on the effective date of this act may elect to participate in the plan before the first anniversary of that date.

The committee action states that the married daughter of a retired Army member who was in a nursing home following several severe strokes with resulting paralysis and senility requested that an election be made on his behalf for coverage under the Survivor Benefit Plan for herself and her sister, as several persons with an insurance interest in the retired member. The daughter has been appointed guardian of her father and according to his will she and her sister are the only heirs of his estate. A completed election form signed by the committee in her capacity as legal guardian, dated and witnessed January 15, 1973, was received at the Army Finance Support Agency. The retiree died January 17, 1973.

It is stated that the retired member's date of birth was April 11, 1909. One daughter was born August 10, 1921, and the other daughter was born November 15, 1924. It is pointed out that the cost of a survivor annuity under 10 U.S.C. 1452(c) for the first daughter would be \$403.03 for a monthly annuity of \$493.49 and the cost of an annuity for the second daughter would be \$557.74 for a monthly annuity of \$430.14. However, there would be no cost charge as the retiree's death occurred before February 1, 1973, the date cost would have initially become due.

The legislative history of the act of September 21, 1972, throws no light upon the problem as referred to above. Hence, it must be concluded that except as to specific conditions contained in the law,

Congress intended the language used to be given the usual or literal meaning. Any pecuniary interest in the continued life of another is an insurable interest. It may be the result of relationship by blood or affinity or that of debtor and creditor and is any reasonable expectation of pecuniary benefit or advantage from the continued life of the insured (retiree). Cf. 22 Comp. Gen. 85. Generally, any near relative would have an insurable interest in the retiree; such as, spouse, children, dependent parents. It is our view that no evidence of an insurable interest would be required of a near relative, but that relationship by contract or otherwise would require proof of an insurable interest. Question 1 is answered accordingly.

Any person, by virtue of family, financial or other relationships, usually has more than one person with an insurable interest in him. Hence, the language of the law must be given its literal meaning, that is to say, the phrases "a natural person," "a person designated by him" and "that person" as used in the statute must be construed as meaning that the retiree must designate the one person having an insurable interest in him whom he wants to provide an annuity to the exclusion of all others having in mind that he must forego a substantial reduction in his retired pay to do so. Furthermore, the law makes no provision for computation of the cost or annuity for more than one designated person with an insurable interest in the retiree.

Also, it is to be noted that with respect to a civil service annuity to a named person having an insurable interest in the employee or Member, 5 CFR 831.601 provides, in pertinent part, as follows:

(a) The right to receive annuity with survivor benefit to widow or widower attaches to a married employee or Member retiring under any provision of subchapter III of chapter 83 of title 5, United States Code, unless he elects instead annuity without survivor benefit. An unmarried employee or Member in good health retiring under any provision (except section 8337) of this subchapter may elect, instead of annuity without survivor benefit, an annuity with survivor benefit to a named person having an insurable interest in him.

(b) An employee or Member may name only one natural person as survivor under this option. The Commission will not accept the designation of a contingent survivor annuitant, and such a designation is a nullity.

* * * * *

The above regulation precludes an employee or Member from naming more than one natural person as survivor. The legislative history of the

Survivor Benefit Plan indicates the intent was to attain comparability, to the extent practicable, with the survivorship plan for retirees from the Federal civil service system.

Accordingly, question 2 is answered by saying that coverage is limited to one person and question 4 requires no answer.

Under the provisions of 10 U.S.C. 1449, the Secretary concerned stands in the place of the mentally incompetent person and must make the election which in his discretion, after a careful consideration of all the facts and circumstances in each case, he believes that person would make if he had been capable of doing so. The language of the law specifically permits the Secretary to make an election to provide an annuity under 10 U.S.C. 1448(b). However, he must consider whether the retiree would have elected to give up a substantial amount of his retired pay for the rest of his life to provide an annuity to a person with an insurable interest.

In view of the answer to question 2, the Secretary in making an election under 10 U.S.C. 1448(b) must also determine the person to be designated. The selection of that person will depend upon the facts and circumstances involved taking into consideration such things as the extent of the pecuniary interest of the persons to be considered in the continued life of the retiree, the closeness of relationship by blood or affinity and any other facts which might have influenced the member in electing to provide an annuity to a particular person having an insurable interest. It is our view that the person requesting an election on behalf of the retiree would have no special preference to be designated to receive an annuity. Question 3 is answered accordingly.

Sincerely yours,

Paul G. Dabbling

Acting Comptroller General
of the United States