



United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-260444

March 22, 1995

The Honorable Ronald D. Coleman
Member, United States House of Representatives
Federal Building, Suite 723
700 East San Antonio Street
El Paso, TX 79901

Dear Mr. Coleman:

This is in response to your letter of January 20, 1995, regarding the claim of Mrs. Alyce K. Minton for a Survivor Benefit Plan (SBP) annuity based on the service of Colonel Warren A. Minton, USA (Retired). We have reviewed the information taken from the correspondence forwarded with your letter and made informal inquiries of the Defense Finance and Accounting Service. We regret to inform you that we must conclude that Mrs. Minton is not entitled to an annuity.

Colonel Minton retired from the Army in 1959 and married Alyce Minton in 1974. During an SBP open season in 1992 he elected SBP coverage with Mrs. Minton as his beneficiary, but died 4 days before Mrs. Minton would have become eligible to receive an SBP annuity.

The SBP, 10 U.S.C. §§ 1447-1460b, is an income maintenance program for surviving dependents of members of the uniformed services. For members who did not elect coverage at retirement or when they acquired dependents, Congress has occasionally provided an open season for members to elect coverage. One such open season was authorized by Pub. L. No. 101-189, § 1405, 103 Stat. 1352, 1586 (1989), as amended by Pub. L. No. 101-510, § 631, 104 Stat. 1485, 1580. Under § 1405(g) of the act an election by the member to provide coverage for a spouse made during the open season was void unless the member survived for 2 years after the election became effective. Under § 1405(e) elections made during the open season became effective on the first day of the month following the month in which they were received by the Defense Finance and Accounting Service (DFAS).

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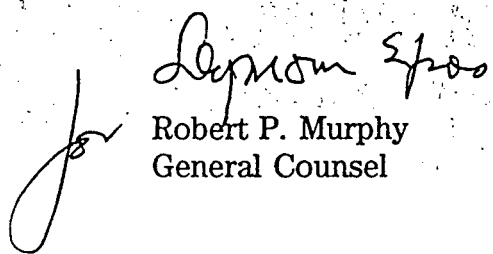
In the present situation Colonel Minton signed an election form in August 1992 designating Mrs. Minton as his beneficiary, and DFAS received it on September 9, 1992. Therefore, the effective date was October 1, 1992. The statute required that Colonel Minton survive until September 30, 1994; but he died on September 26. Therefore, Mrs. Minton is not entitled to an SBP annuity. However, the SBP premiums deducted from Colonel Minton's retired pay beginning October 1, 1992, are payable in a lump sum to Mrs. Minton.

However, we informally contacted the Department of Veterans Affairs (VA) with regard to Mrs. Minton's situation. If Colonel Minton had a 100 percent disability for VA purposes, she may be entitled to monthly Dependency and Indemnity Compensation (DIC) benefits. She should contact the VA to apply for DIC if she has not already done so.

In this regard we would like to point out that the law prohibits a survivor from receiving both full SBP and full DIC benefits based on a member's service. Thus, even if Mrs. Minton became entitled to an SBP annuity, she would receive only the amount of the SBP annuity that exceeds any DIC benefit that may be payable. See 10 U.S.C. § 1450(c).

We regret that a more favorable reply is not possible.

Sincerely yours,



Robert P. Murphy
General Counsel