



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Phyllis M. Tharp - Direct Payment of Former
Spouse's Military Retired Pay

File: B-229440

Date: November 25, 1988

DIGEST

Notwithstanding a 1986 modification to a divorce decree giving her a direct interest in her former husband's retired pay, the former spouse of a retired U.S. Army member is not entitled to receive direct payments from the retired pay of the service member since the original divorce decree issued in 1977 awarded the retired pay solely to the member. According to the Uniformed Services Former Spouses' Protection Act and implementing regulations, a subsequent amendment of a court order issued on or after June 26, 1981, to provide for a division of retired pay as property is unenforceable.

DECISION

This decision concerns whether the U.S. Army properly denied Mrs. Phyllis M. Tharp's application for direct payments from the retired pay of First Sergeant Ernest N. Tharp as called for by a 1986 modified divorce decree issued by a Washington court. After reviewing the information before us, we hold that the U.S. Army acted correctly since it has no authority to make direct payments to Sergeant Tharp's former spouse from his retired pay in the circumstances of this case.

BACKGROUND

The Tharps were married on January 21, 1946, and divorced in the State of Washington on November 17, 1977. In its decree of divorce the court stated: "The plaintiff [Sergeant Tharp] should be awarded as his sole and separate property, free and clear of any and all claims of the defendant . . . all retirement benefits and other pension rights the plaintiff has accumulated incident to his employment." In turn, Mrs. Tharp was awarded "in lieu of an interest in the retirement benefits accrued for the benefit of the plaintiff incident to his employment during the marriage of the parties a judgment in the sum of

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\$44,877.72. . . ." Sergeant Tharp was to make monthly payments of \$358.38 until this judgment was paid.

Mrs. Tharp later brought an action in the court which had granted the divorce and this court entered an Order Vacating Decree which modified the original order so as to give Mrs. Tharp an interest in Sergeant Tharp's retired pay. This order was issued on October 13, 1986. Sergeant Tharp appealed this new order and the Court of Appeals for the State of Washington affirmed the trial court.

The Army refused to honor the 1986 court order and make direct payments to Mrs. Tharp on the basis that for purposes of making direct payments to Mrs. Tharp the court order was unenforceable.

DISCUSSION

With the passage of the Uniformed Services Former Spouses' Protection Act,^{1/} which added section 1408(d) to title 10 of the United States Code, former spouses of retired service members became eligible to receive direct payments of a portion of their former spouse's military retired pay to satisfy a court-ordered division of property. However, section 1006(b) of the Act, 10 U.S.C. § 1408 note, provides that in the case of a court order that became final before June 26, 1981, payments under section 1408(d) "may only be made in accordance with such order as in effect on such date and without regard to any subsequent modifications." See also 32 C.F.R. § 63.6(c)(7) (1986), which states in pertinent part that:

"A modification on or after June 26, 1981, of a court order that originally awarded a division of retired pay as property before June 26, 1981, may be honored for subsequent court-ordered changes made for clarification, such as the interpretation of a computation formula in the original court order. For court orders issued before June 26, 1981, subsequent amendments after that date to provide for a division of retired pay as property are unenforceable under this part."

^{1/} Public Law 97-252, title X, § 102(a), Sept. 8, 1982, 96 Stat. 730. For a discussion of the purpose of this Act, see 63 Comp. Gen. 322 (1984).

CONCLUSION

We agree with the Army's conclusion that the 1986 order is an unenforceable amendment to the 1977 divorce decree. The 1986 order does not clarify the 1977 decree, but modifies and alters the original award to Mrs. Tharp by giving her an interest in Sergeant Tharp's retired pay contrary to the language of the court's 1977 order. The plain language of the statute and its implementing regulations specifically render this type of modification unenforceable.

Accordingly, we hold that the U.S. Army properly has denied Mrs. Tharp's application for direct payments from her former husband's retired pay.

Milton J. Fowler
for Comptroller General
of the United States