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Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Eileen B. Williams - Social Security Offset  
from Survivor Benefit Plan

**File:** B-238740

**Date:** April 23, 1991

### DECISION

This is in response to a request for an advance decision regarding the calculation of the Survivor Benefit Plan (SBP) annuity of Mrs. Eileen B. Williams, widow of Major Ralph E. Williams, USAF (Retired).<sup>1/</sup> Mrs. Williams receives a railroad retirement survivor annuity as well as an SBP annuity. Her SBP annuity is currently being offset by the portion of the railroad annuity that constitutes social security benefits predicated on Major Williams' military service after 1956.

The Army Finance Center asks whether offset, which clearly would be proper if no railroad annuity were involved, is appropriate; the Finance Center's concern is that the social security benefits in issue are paid as elements of the railroad annuity, not directly by the Social Security Administration.

For the reasons presented below, offset is appropriate.

In 1972 Congress established the SBP (10 U.S.C. §§ 1447-1455) to complement the social security benefits of surviving military dependents. Under the plan, a retired member may elect to provide an annuity for his dependents. The member accepts a reduced amount of retired pay during his life, and upon his death an annuity is payable to the eligible survivor. However, when the survivor is eligible for social security benefits based on the member's post-1956 military service, in addition to the SBP annuity, a deduction for social security benefits is made from the SBP annuity. 10 U.S.C. § 1451.

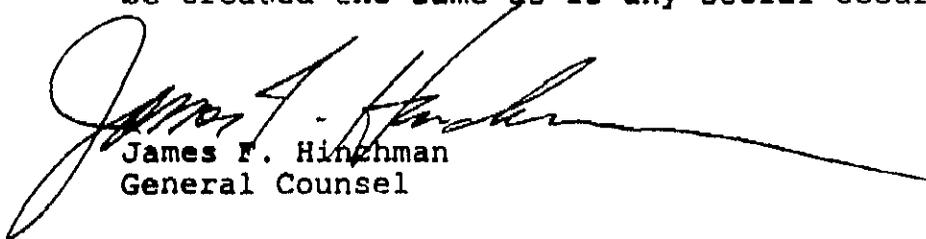
Congress enacted the Railroad Retirement Act of 1974, Pub. L. No. 93-445, 45 U.S.C. § 231, to restructure the retirement plan of railroad employees. The Act established a two-tiered system of retirement benefits for employees as well as

<sup>1/</sup> The Department of Defense Military Pay and Allowance Committee has assigned the number DO-A-1498 to the request.

survivor benefits for covered survivors, Tier I benefits are social security benefits paid by the Railroad Retirement Board on behalf of the Social Security Administration, based on railroad and non-railroad employment covered by the Social Security Act. See 20 C.F.R. Part 235. (The Board is periodically reimbursed through financial interchange with the Social Security Administration.) Tier II benefits come from railroad service only.

We think the offset currently being effected is proper. Major Williams retired from non-regular military service in 1975 and elected SBP coverage for his wife. He died in 1989, and under SBP law his widow's SBP annuity clearly had to be reduced by social security benefits payable to her based on Major Williams' post-1956 military service. Upon retirement from his civilian career, Major Williams was entitled to retirement benefits from the Railroad Retirement Board; the Tier I benefits, and the annuity payable to his widow upon his death, included social security benefits based on the member's military service after 1956. In these circumstances, 10 U.S.C. § 1451 logically requires an SBP offset equal to the amount of such social security benefits.

The Finance Center also asks whether the social security offset should be adjusted "when the widow's benefits from the Railroad Board are reduced/withheld because of her earnings income." In view of our conclusion above, the offset should be treated the same as is any social security recipient's.



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General Counsel