



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Jean K. Derr
File: B-230378 5
Date: August 6, 1992

DIGEST

Where a widow elected to begin drawing reduced social security benefits at age 60, the reduction in her Survivor Benefit Plan (SBP) annuity required by statute at age 62 to offset her social security benefits was properly computed based on the social security benefits she would have been entitled to at age 62, rather than on the benefit level set at age 60. Because the widow would be entitled to receive 82.9 percent of her full entitlement had she elected to begin receiving social security benefits at age 62, the proper offset therefore reduced SBP payments to her by an amount equal to 82.9 percent of the portion of her social security entitlement attributable to her deceased husband's military earnings, rather than by an amount equal to 71.5 percent of that entitlement. Prior inconsistent decisions are overruled.

DECISION

Mrs. Jean K. Derr requests reconsideration of our Claims Group's denial of her claim for amounts deducted from her Survivor Benefit Plan (SBP) annuity because she receives social security benefits. She contends that the reduction in her SBP annuity to offset social security benefits she receives should not exceed the portion of her actual social security benefits attributable to her deceased husband's military earnings. For the reasons stated below her claim is denied.

Mrs. Derr is the surviving spouse of Chief Warrant Officer Charles R. Derr, who retired from the Air Force on March 1, 1973, and then worked 10 years in the private sector. In March 1983, Mr. Derr reached age 65 and filed for social security benefits; however, he continued to work until his death in June of the same year and did not receive any benefits.

Mrs. Derr was age 60 at the time of Mr. Derr's death and elected to receive widow's social security benefits. Because she began her benefits at age 60, she received

71.5 percent of the full social security entitlement she would have received if she had been 65. For 2 years until she reached age 62, Mrs. Derr received both social security benefits and an unreduced SBP annuity. When she turned 62, the social security offset took effect, reducing her SBP annuity by an amount equal to 82.9 percent of her full entitlement, based on earnings attributable to her husband's military service only, in accordance with a formula contained in Appendix 20 of in the Department of Defense Military Retired Pay Manual.

Mrs. Derr contends that the offset from her SBP annuity should be no more than 71.5 percent of the portion of her full social security entitlement attributable to her husband's military service because that is the rate at which her social security benefits are actually being paid. (Her claim is presented in percentage terms because the dollar amounts of her benefits increase each year through cost-of-living adjustments in social security.)

The Air Force Accounting and Finance Center, now Defense Finance And Accounting Service, Denver Center, denied Mrs. Derr's claim on the ground that the total dollar amount of her monthly social security benefits exceeds the social security offset used to reduce her monthly SBP annuity payment, and that the offset is therefore not excessive. Our Claims group agreed. We agree that Mrs. Derr's claim should be denied, but for different reasons.

The SBP, 10 U.S.C. §§ 1447-1455, was designed as an income maintenance program for the surviving dependents of retirement-eligible service members. The social security offset requirement was a fundamental feature of the program. The offset provision reflects the intent of Congress that SBP annuities were to complement social security benefits to which the annuitant "would be entitled" based on the retiree's military service. Congress intended that the SBP annuity of a surviving spouse be reduced at age 62 when the spouse became eligible for such social security benefits.

The law contains a formula for computing the offset from the SBP annuity. See 10 U.S.C. § 1451(e)(3).¹ The formula

¹In 1985, Congress eliminated the social security offset calculation and established a two-tier flat rate system under which before age 62 the survivor would receive 55 percent of the retired pay to which the member would have been entitled, and thereafter 35 percent in recognition of entitlement to social security. 10 U.S.C. § 1451(a)(1). These changes were prospective and do not affect Mrs. Derr. Provision was made to retain the social security offset for
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requires that the offset be computed using only the military service of the member (no consideration is given for social security covered earnings outside of military service) and assumes that the member lives to age 65. We have consistently held that the amount of the offset should be calculated on the basis of wages attributable to military service only, 53 Comp. Gen. 733 (1974).

The SBP offset will exceed the amount of service-related social security benefits actually received in cases where an annuitant elects to receive social security benefits before age 62 because the program legislation requires that the offset be calculated based on the annuitant's entitlement at age 62, not on the entitlement at the earlier age when social security benefits actually commence. In this connection, our review of the legislative history of Public Law 92-425, September 21, 1972, 86 Stat. 706, which established the SBP shows that Congress did not consider the possibility of a widow without dependent children receiving social security benefits before age 62. The Senate Report states that "no benefit is payable when a widow is under age 62 and has no dependent children." S. Rept. No. 92-1089, 92d Cong., 2d Sess. (1972) at page 8. The House report similarly only discusses benefits after age 62. H. Rept. No. 92-481, 92d Cong. 1st Sess. (1971) at pages 14-16. However, since 1965 a widow could take reduced benefits at age 60. 42 U.S.C. § 402 (e) (1) (B). Therefore, it appears that when the social security offset provision was passed, it was not recognized that pre-age 62 benefits would occur.

The Social Security Administration reduces benefits for those who elect to receive them early on the basis of actuarial assumptions. The reductions are as follows: a limit of 82.9 percent of full entitlement for those opting to begin payments at age 62, and 71.5 percent for those beginning at age 60. The result is that for survivors who elected to begin receiving social security benefits at age 60, the amount of their offset turns out to be larger than the amount of social security they actually receive. The larger offset results from the fact that the amount of the offset is pegged to the level of social security benefits to which the surviving spouse would have been entitled at age 62, rather than pegged to the lesser benefit actually received beginning at age 60. Though not inappropriate from an actuarial perspective, an offset that is larger than the social security payment actually being received often

¹ (...continued)

persons who, like Mrs. Derr, were eligible Plan beneficiaries on or before October 1, 1985, if advantageous to them. 10 U.S.C. § 1451(a) (1) (B).

strikes these survivors, most of them widows, as erroneous and unfair.

This anomaly takes on added significance because of a second effect of delaying the social security offset until age 62. Surviving spouses electing to begin receiving social security payments at age 60 in effect receive both social security benefits and full monthly SBP payments, unreduced by any social security offset, for 2 years. Receiving two full payments for this period defeats the intent of Congress in designing the SBP as a supplement to social security, rather than as an add-on.

In Mrs. Derr's case, her election to begin receiving social security payments at age 60, as early as possible, meant that she would therefore receive less per payment (71.5 percent of what she would have received had she waited until age 65 to begin) because she would be expected to receive a larger number of payments over the balance of her expected lifetime. On the same basis, the calculation of an offset that does not take effect until age 62 will necessarily produce a larger offset than would an offset beginning at age 60, because it is expected to be in effect for two fewer years.

To indicate more precisely how the social security offset applies to Mrs. Derr, we have reconstructed her situation immediately after her 62nd birthday in November 1985 as fully as possible based on available records. In December 1985, her gross monthly SBP payment, unreduced by the offset for her social security benefits, was \$1,346. Her total monthly social security payment was \$565, made up of \$197 attributable to her husband's civilian earnings, plus \$368 attributable to her husband's military earnings. The \$368 was 71.5 percent of her social security entitlement level of \$515 based solely on her husband's military earnings. The amount of her social security offset was \$427, calculated as 82.9 percent of her entitlement level of \$515 attributable to her husband's military service. Thus, with the offset in effect, her monthly SBP annuity payment was reduced by \$427. Her monthly social security payment remained unchanged at \$565. Therefore, at the end of 1985, the amount of the monthly social security offset in her SBP payment (\$427) exceeded by \$59 the \$368 amount of her monthly social security payment that would have been payable on the basis of her husband's military service only.

The amount of Mrs. Derr's offset does not appear to be unreasonable, given the fact that for 2 years, from December 1983 to December 1985, she received both the social security payments to which she was entitled, plus full, unreduced SBP payments. Two years with no offset brought her \$8,832 (24 payments times a \$368 per month offset) in

additional SBP payments beyond what she would have received had an offset applied. Thus the higher offset taking effect for her at age 62 can be viewed merely as a way of compensating gradually over a period of years for the unreduced SBP payments she received from December 1983 to December 1985.

Military authorities implementing the SBP program, faced with survivors electing to commence social security benefits at age 60, and a law stating that the offset for these benefits cannot take effect until age 62, have followed the language of the statute and begin deductions at age 62 based on the social security benefit levels for those who commence benefits at that age. This decision is defensible from a legal as well as an actuarial perspective. It also greatly simplifies the task of establishing the amount of the offset for each new survivor affected by it, by enabling the military to follow the same rule for all who are affected without regard to the actual start date of their social security benefits. We therefore will not object to the military's resolution of the anomaly created by the statute.

In accordance with the above discussion, Mrs. Derr's claim is denied.

In reaching this decision, we overrule two previous Comptroller General decisions in cases where a social security offset exceeded a social security benefit. In one, the surviving spouse elected to receive social security before age 62 (Lucille Eaton, 65 Comp. Gen. 813 (1986)). In the second case, the member elected to receive social security benefits prior to age 65 and his surviving spouse began receiving benefits prior to 62 (Barbara Schleich, 69 Comp. Gen. 203 (1990)). In these cases, we took the position that the offset may not exceed the actual service-related social security benefit. We now conclude that in certain instances, such as those reflected in the facts of these cases, this position should be reversed. These cases are thus overruled. This new position should be applied prospectively only.

In view of the apparently unintended effect of pre-age 62 receipt of social security benefits on SBP offsets, we are, by letters of today, bringing this matter to the attention of the appropriate congressional committees.

for 
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