14235 Mr. Ridinger

PL MII

DECISION

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

[Social Security Offset Requirement of Survivor Benefit Plan]

FILE: B-196569 DATE: July 8, 1980

MATTER OF: Survivor Benefit Plan - Social Security offset

DIGEST: 1. Service members, upon whose death Survivor Benefit Plan (SBP) annuities became payable to surviving spouses, in some cases are fully insured for Social Security coverage based on lifetime employment, but do not achieve that status based solely on military service. For the purpose of the reduction in the SBP annuity required by 10 U.S.C. 1451(a), it is unnecessary that the member acquired a fully insured Social Security status based solely on military service. The setoff is to be based on that portion of the total Social Security payment attributable to the deceased member's military service. See 58 Comp. Gen. 795 (1979).

2. Service members upon whose death Survivor Benefit Plan annuities became payable to surviving spouses, receive free wage credits under 42 U.S.C. 429 for military service after 1956 for the purpose of computing total Social Security payments. Therefore, for the purpose of computing the setoff required by 10 U.S.C. 1451(a), since generally those credits tend to increase Social Security payments, they must be included in the computation.

This action is in response to a request for advance decision from the Department of Defense Joint RSFPP/SBP Board (Item No. 79-1) on questions relating to the Social Security offset requirement of the Survivor Benefit Plan (SBP).

The first question is:

Is a Social Security offset required when the SBP annuitant is a widow(er) aged 62 if

~~811266~~

112734

there is no entitlement to a Social Security benefit based solely on the retiree's military earnings, but such entitlement exists based on lifetime earnings?

The material accompanying the submission states that the meaning of the provisions of law governing the setoff from annuities because of Social Security payments (10 U.S.C. 1451(a)), seems reasonably clear. However, it is stated that when the legislative history of the provision is considered, the word "entitled" as used therein suggests a different connotation. It is theorized that the word "entitled" could imply that in order for the Social Security setoff to be operable, the person upon whose death the annuity became payable, had to be fully insured for Social Security coverage purposes based solely on military service. In the absence of such full coverage, 10 U.S.C. 1451(a) could be construed to provide that a setoff would not be required.

For the reasons stated below, we disagree with that construction of the law, and therefore, the first question is answered yes.

Section 1451 of title 10, United States Code, provides in part:

> "(a) * * * When the widow or widower reaches age 62 * * * the monthly annuity shall be reduced by an amount equal to the amount * * * to which the widow or widower would be entitled under subchapter II of chapter 7 of title 42 based solely upon [military] service by the person concerned * * * and calculated assuming that the person concerned lived to age 65. * * *"

Decision B-192117, September 24, 1979, 58 Comp. Gen. 795, involved a claim for an increase in an SBP annuity in a situation similar to that suggested by the question. After analyzing the legislative history

of 10 U.S.C. 1451(a) we ruled that for the purpose of effecting the required setoff, it was not necessary that the deceased member acquire a fully insured Social Security status based solely on his military service. Since the qualification for and the computation of Social Security payments are based on an individual's lifetime coverage, where a deceased member had nonmilitary Social Security coverage, for 10 U.S.C. 1451(a) purposes the setoff is to be based on that portion of the total Social Security payment receivable by the surviving spouse which would be attributable to the deceased member's military service. For the method of computing the amount of setoff, see 53 Comp. Gen. 733 (1974).

The second question is:

> Should there be any changes made in the setoff procedures set forth in Department of Defense Directive 1332.27? If so, should they be prospective or retroactive?

The material with the submission points out that the Department of Defense Directive 1332.27 requires that the free wage credits authorized by 42 U.S.C. 429 be included in the computation of the setoff. It is stated that those credits are added to the setoff computation without regard to any civilian wages earned during the period and tend to artificially inflate the amount of the setoff. As a result, it is indicated that there would be a basis for holding that the free wage credits should not be included in the computation.

For the reasons stated below, the second question is answered no.

Under 42 U.S.C. 429 (Supp. I, 1977), individuals who earn Social Security credits as a result of military service after 1956 receive additional quarterly monetary credits for Social Security payment computation purposes, without cost to them. Such additional wage credits would

generally provide an additional benefit to an individual's actual Social Security payment entitlement, tending to increase that total payment. It is our view that for the purpose of computing the setoff under 10 U.S.C.1451(a), the free wage credits generated by a deceased member's military service are an integral part of the Social Security benefit and are to be included in the computation.

Milton J. Socolar

For The Comptroller General
of the United States