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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20543

B-198099

April 17, 1980

The Honorable John Breaux
House of Representatives

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Dear Mr. Breaux:

Reference is made to your communication of March 5, 1980, requesting a report on matters mentioned in an inquiry to you from two of your constituents, Mr. Bob LaBlanc and Mr. Clarence Baldrige, who are eligible for retirement from the Postal Service and the military (Reserves or National Guard). The question asked concerns the effect the ruling in decision B-192470, January 24, 1980 (59 Comp. Gen. ___), would have on survivor benefit coverage for that category of retiree.

The January 24, 1980 decision was rendered in response to a request for reconsideration of an earlier decision, B-192470, January 3, 1979. That earlier decision, copy enclosed, which was affirmed in the January 24, 1980 decision, concerned a retired service member who elected into the military Survivor Benefit Plan (SBP) and thereafter retired from the civil service, having waived receipt of military retired pay so as to increase his civil service retirement. He also decided to retain survivor coverage under the civil service survivor annuity plan. In that situation we held that when the member dies while the waiver of military retired pay is in effect, no military SBP annuity is payable to his survivors since they are covered by the civil service survivor plan and the law does not authorize double coverage for a member who has waived his military retired pay.

We are unable to determine definitely from the material submitted whether the individuals in question are eligible to receive retired pay for non-Regular service as authorized by chapter 67 of title 10, United States Code (10 U.S.C. §§ 1331-1337), or under other retirement provisions contained in title 10. See 10 U.S.C. § 1331(a)(4). However, since it appears they may be eligible under chapter 67, this response is based on that assumption.

The provisions of the military SBP governing in decisions B-192470, supra, were those contained in 10 U.S.C. § 1450(d), which provides:

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"(d) If, upon the death of a person to whom section 1448 of this title applies, that person had in effect a waiver of his retired or retainer pay for the purposes of subchapter III of chapter 83 of title 5, an annuity under this section shall not be payable unless, in accordance with section 8339(i) of title 5, he notified the Civil Service Commission that he did not desire any spouse surviving him to receive an annuity under section 8341(b) of that title."

The key words are "had in effect a waiver of his retired or retainer pay" for civil service retirement purposes. Basically, an employee of the Federal Government must meet the combination of age and years of Federal service as set forth in 5 U.S.C. § 8336, in order to retire under the civil service system and receive an immediate annuity. If that individual had military service time, he is authorized to include it in the computation to make up the required years of service. However, if the individual is receiving military retired pay, in order to include his military service in that computation, he must waive receipt of that retired pay. If he had previously elected survivor annuity coverage under the military SBP and then accepts survivor coverage under the civil service retirement system, and then dies while the waiver of military retired pay is in effect, survivor benefits under the military SBP are not payable.

That type of situation does not appear to be applicable to members eligible to receive or who are receiving retired pay based on non-Regular military service. The provisions of law governing the use of military years of service for civilian retirement purposes (5 U.S.C. § 8332(c)), specifically exempts chapter 67 retirements from the military retired pay waiver requirement. Thus, if an individual is eligible to receive or is receiving retired pay under chapter 67, and then retires from the civil service, he may include his military years of service in the civil service computation without having to waive receipt of his military retired pay. In that respect chapter 67 (non-Regular) retirees differ from the retiree who was the subject of the January 24, 1980, and January 3, 1979 decisions.

Thus, for the purposes of survivor benefit coverage, if the member had elected military SBP coverage, it would appear that he could thereafter accept survivor coverage under the civil service

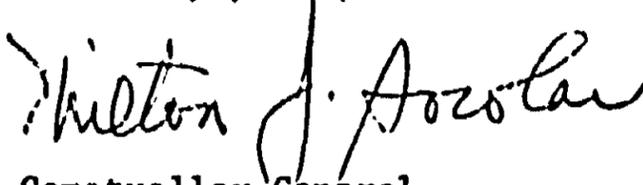
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retirement system without jeopardizing his SBP coverage. And, in the event of his death, it would appear that so long as he had elected into both survivor annuity systems, his qualified survivors could receive benefits from both.

As previously noted, we have no specific information regarding the type of military retirement for which Mr. LeBlanc or Mr. Baldrige would be eligible. Therefore, nothing stated herein should be construed by them as conclusively establishing their rights under the military SBP or the civil service survivor benefit program or both. In the circumstances, we suggest that if they have any further questions regarding their own individual military SBP participation, that they direct them to the appropriate activity of their respective services.

We trust the foregoing information serves the purpose of your inquiry. The enclosures with your communication are returned herewith.

Sincerely yours,



For the Comptroller General
of the United States

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