

Westfall

15731

DECISION



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

*[Propriety of Survivor Benefit Plan Annuity Being Offset
To Reflect Social Security Benefits]*

FILE: B-199478

DATE: December 23, 1980

MATTER OF: Mary L. Lott

DIGEST: A widow's Survivor Benefit Plan annuity payments were offset to the extent of the Social Security mother's benefit to which she would have been entitled based on the deceased service member's military Social Security coverage. However, she was actually receiving Social Security benefits based on her own work record and, therefore, received a reduced mother's benefit due to the benefits payable based on her own record. She is not entitled to reimbursement of the Survivor Benefit Plan annuity withheld for the difference between the mother's benefit to which she would have been entitled had the mother's benefit not been reduced in her case and the reduced mother's benefit which she actually received.

This action is in response to a letter from [the Disbursing Officer, United States Army Finance and Accounting Center, Indianapolis, Indiana, submitting a voucher and requesting an advance decision as to whether or not the Survivor Benefit Plan annuity of Mrs. Mary L. Lott should be offset by Social Security benefits in the circumstances described.] This request was assigned Control No. DO-A-1348 by the Department of Defense Military Pay and Allowances Committee, and was forwarded to this Office by the Office of the Comptroller of the Army on June 30, 1980. We hold that Mrs. Lott's Survivor Benefit Plan annuity was properly offset to reflect the full mother's benefit before that benefit was reduced on account of benefits payable based on her own work record.

[Master Sergeant Bobby W. Lott was placed on the temporary disability retired list] on February 22, 1977, under the provisions of 10 U.S.C. § 1202, with 26 years, 9 months, 8 days for basic pay, 26 years,

~~013944~~ 114023

B-199478

5 months, 14 days for percentage purposes, and a disability rating of 100 percent. [He elected, under the provisions of the Survivor Benefit Plan (SBP), to provide an annuity based on full retired pay for his wife and child. Sergeant Lott died on April 16, 1978.]

[An annuity was established in favor of the deceased's widow, Mary L. Lott, effective July 1, 1978, retroactive to April 17, 1978, in the amount of \$550.23, less a Social Security offset of \$193.80. [The annuity was increased by cost-of-living adjustments to \$577.19 on September 1, 1978, and to \$599.70 on March 1, 1979. [The offset, which was increased to \$206.40 as of June 1, 1978, was equal to the amount of the mother's benefit to which Mrs. Lott would ordinarily have been entitled as a result of the deceased's active duty earnings. However, Mrs. Lott did not receive a mother's benefit of either \$193.80 or \$206.40. Since she had apparently been receiving Social Security benefits on her own work record prior to her husband's death, her mother's benefit was reduced by the Social Security Administration to \$25.80 as of April 1978 and \$27.40 as of June 1978. [The mother's benefit and offset were discontinued on July 31, 1979, due to the fact that Mrs. Lott's daughter attained the age of 18 on August 28, 1979.]

Mrs. Lott, as the surviving spouse of a retired member who died of service-connected causes, was entitled to Dependency and Indemnity Compensation (DIC) payments from the Veterans Administration (VA), as well as Social Security benefits. The Survivor Benefit Plan provides, however, that a widow or widower who is entitled to both DIC and SBP benefits will receive as a Survivor Benefit Plan annuity only the amount by which the SBP benefit exceeds the DIC entitlement. 10 U.S.C. § 1450(c). [In such a case, the amount deducted from the member's retired pay which corresponds to the cost of that part of the SBP entitlement not paid because of the DIC payment will be refunded to the spouse.] 10 U.S.C. § 1450(e). [Since at the time

B-199478

Mrs. Lott's SBP annuity was established, DIC information was not available, Mrs. Lott was paid both benefits concurrently. On May 1, 1979, the annuity was reduced to the amount by which the SBP benefit exceeded the DIC payment, and an overpayment of annuity was computed, retroactive to April 17, 1978, in the amount of \$4,546.20. According to the submission, the VA is currently remitting payments to liquidate the overpayment.

We are asked to determine whether the amount of overpayment was incorrectly computed, and whether, as a consequence, when the amounts withheld from her current benefits to liquidate the overpayment were subtracted from the amount Mrs. Lott actually received, she was underpaid. The voucher presented to us for certification totals \$3,214.63, a sum arrived at by adding the amounts of Social Security offset applied to payments made for the period April 17, 1978, through July 31, 1979.

Specifically, we are asked:

- 1) Should the widow's annuity be reduced by a Social Security offset?
- 2) If the answer to question 1 is affirmative, should the offset be computed using the ratio formula, as when the "mother's" benefit is reduced because of earnings?
- 3) If the answer to question 1 is negative, should full refund be made?

Where a widow has one dependent child, the monthly annuity to which she is entitled must be reduced by--

"an amount equal to the mother's benefit, if any, to which the widow would be entitled under subchapter II of chapter 7 of title 42

B-199478

based solely upon service by the person concerned as described in section 410(1)(1) of title 42 and calculated assuming that the person concerned lived to age 65." 10 U.S.C. § 1451(a).

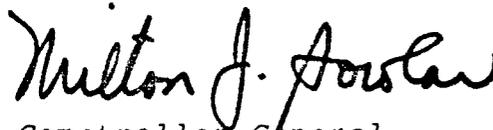
As is noted above, the Social Security Administration determined that Mrs. Lott's "mother's benefit," which she received based on her deceased husband's Social Security coverage, must be reduced since she was receiving Social Security benefits based on her own work record. Thus, the question is whether her SBP annuity is to be reduced by what the "mother's benefit" would have been based on her husband's Social Security coverage, or whether her annuity should be reduced by the lesser mother's benefit she actually received.

The Survivor Benefit Plan established by Public Law 92-425, 10 U.S.C. 1447, was designed to build on the income maintenance foundation of the Social Security system in order to provide survivor coverage to military widows and dependent children in a stated amount from retirement income derived by a member from his military service. Since the Government contributes substantial amounts to the Social Security system on behalf of members of the uniformed services it was determined that there should be an offset against the Survivor Benefit Plan annuities when a survivor becomes entitled to Social Security survivorship benefits. See page 29, Senate Report No. 92-1089, September 6, 1972. Thus, when survivors who are receiving annuities under this Plan receive Social Security survivor benefits or become entitled to receive such benefits a reduction of the annuity under the Plan is required and is calculated on the basis of the Social Security survivorship benefit which would be attributable solely to a retired member's years of military service. In this regard, it is to be noted that the actual Social Security benefit to which a survivor is entitled is not affected by this computation. See 53 Comp. Gen. 758, 759 (1974).

B-199478

We have held that the Social Security offset of the SBP annuity for a widow aged 62 or more is determined by the Social Security payment attributable to the military service of the member on whose death the SBP annuity is payable even where the widow may receive Social Security payments based on her own employment or the employment of some other person. 57 Comp. Gen. 339, 343 (1978). Similarly, we believe that amount by which an SBP annuity is to be reduced for the Social Security mother's benefit should be the amount to which the widow "would be entitled" based upon the military service of the deceased member, regardless of whether the widow is actually receiving that amount or some other amount based on her own Social Security employment record.

Accordingly, question 1 is answered yes, question 2 is answered no, and question 3 requires no answer.



For the Comptroller General
of the United States