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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL

B-178884

NOV 3 1976

Dear Colonel [REDACTED]

Reference is made to your letter of September 30, 1976, in which you seek information concerning your wife's entitlement to receive an annuity under the Survivor Benefit Plan, 10 U.S.C. 1447-1455, as added by Public Law 92-425, September 21, 1972, 86 Stat. 706, if you should predecease her.

You say that prior to your retirement from the Army you had nine quarters of military Social Security covered earnings for the period January 1, 1957, to September 1, 1963, and that you were not eligible for any Social Security benefits based solely on your military earnings since your year of birth was 1903. While it is not entirely clear from your letter, it appears that you elected to participate in the Survivor Benefit Plan and have been advised that upon your death your widow's annuity will be subject to a reduction, even though the number of Social Security covered quarters you earned were fewer than the minimum required. You requested clarification of this matter.

An official decision is not authorized at your request on the question presented. See 31 U.S.C. 74 and 82d. However, the following references to certain provisions of the Survivor Benefit Plan and its legislative history may be of assistance to you.

The provisions relating to the determination of the amount of the annuity payable under the Survivor Benefit Plan are found in 10 U.S.C. 1451. Subsection (a) of that section provides:

"(a) If the widow or widower is under age 62 or there is a dependent child, the monthly annuity payable to the widow, widower, or dependent child, under section 1450 of this title shall be equal to 55 percent of the base amount. However, when the widow has one dependent child, the monthly annuity shall be reduced by an amount equal to the mother's benefit, if any, to which the widow would be

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entitled under subchapter II of chapter 7 of title 42 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. When the widow or widower reaches age 62, or there is no longer a dependent child, whichever occurs later, the monthly annuity shall be reduced by an amount equal to the amount of the survivor benefit, if any, to which the widow or widower would be entitled under subchapter II of chapter 7 of title 42 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. For the purpose of the preceding sentence, a widow or widower shall be considered as entitled to a benefit under subchapter II of chapter 7 of title 42 even though that benefit has been offset by deductions under section 403 of title 42 on account of work."

In House of Representatives Report No. 92-481, 92d Congress, 1st Session, accompanying H.R. 10670, which eventually became Public Law 92-425, it is stated on page 14, that—

"* * * the Committee has chosen to use this most generous formula for determining Social Security widow's benefits attributable to the spouses military service to be assured that military annuities will not be reduced because of Social Security earned [by the member] outside government service and to assure that the widow will receive at least 55 percent of the man's military retired pay."

And on page 15 of that report it states—

"* * * It cannot be overemphasized that the only Social Security payments which are taken into account in this integration of benefits are the payments to the widow based on her husband's Social Security earned while he was on active duty in military service."

A similar statement was made on page 31 of Senate Report No. 92-1089, accompanying the same bill.

On the basis of the above-quoted provisions of Public Law 92-425 and its legislative history, it would appear that if a member's widow

B-178884

is an eligible beneficiary under the Survivor Benefit Plan, she would be entitled to receive from the military service in which the member was retired, an annuity equal to the difference between the Social Security benefits which the widow would be entitled to receive as the member's widow based on credits attributable to the member's military service and up to 55 percent of the member's retired pay, depending on the percentage of participation elected by the member. It does not appear that Congress intended to exclude Social Security credits received as a result of military service from consideration in reducing the SBP payments on the basis that such Social Security credits, taken alone, would not qualify the individual for a Social Security annuity where those credits combined with the individual's other credits would be sufficient to provide coverage.

In this regard, it is to be noted that Social Security payments are made by the Social Security Administration, not the General Accounting Office, and that agency has the sole authority to determine the amount of Social Security benefits actually paid.

We trust this information will serve the purpose of your inquiry.

Sincerely yours,

Edwin J. Monsma

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