

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

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B-178884

March 8, 1978

The Honorable Thomas F. Railsback
House of Representatives

Dear Mr. Railsback:

Reference is made to your communication dated January 4, 1978, forwarding for our consideration a letter addressed to you dated December 20, 1977, from Major Carl L. Matthews of the Rock Island Arsenal Military Retirees Council questioning the propriety of the method by which the United States Army Finance and Accounting Center computes Social Security offsets for the purpose of reducing annuity payments required by the Survivor Benefit Plan (SBP), Public Law 92-425, approved September 21, 1972, 86 Stat. 706, 10 U.S.C. 1447-1455 (Supp. II, 1972).

Major Matthews says that a situation which has come to the Military Retirees Council's attention involves a retired Army member who elected SBP coverage for his spouse. It appears that in February 1975 the retired member died and the widow received the full SBP benefit until September 1977, when she reached age 62. At that time the Army Finance and Accounting Center computed and applied the Social Security offset, which was determined by use of the Primary Insurance Amount (PIA) chart furnished them by the Social Security Administration. That chart, however, apparently represented updated figures as of June 1977, including applicable cost-of-living (COL) increases since 1975.

The Council questions the use of that PIA chart. It apparently is their view that the computation of offset should have been determined based on the PIA chart in effect at the date of the retiree's death in 1975 and held in abeyance until the widow reached the age of 62 in 1977.

In addition Major Matthews says that he has been informed that the Finance and Accounting Center will increase the widow's Social Security offset by any COL increases subsequent to the initial determination of offset. He expresses the view that such a procedure is unfair and unsupported by Public Law 92-425, and that such practice would produce a continuous erosion of SBP benefits, which it is believed was not intended by Congress.

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The provisions of the Survivor Benefit Plan which relate to Social Security offset, are contained in 10 U.S.C. 1451. With regard to the described situation, the third sentence of subsection 1451(a) would appear to be controlling. That sentence provides that when the widow reaches age 62, the widow's monthly SBP annuity is to be reduced by an amount equal to the Social Security benefit to which the widow would be entitled based solely upon the member's military service.

As we understand the Social Security law, a widow's benefit (42 U.S.C. 402(b)), while based on the fact of death of the insured person, does not accrue until the widow becomes age 62. The basic amount of Social Security benefits payable are determinable as of that time, not as of the time that the insured person died. Under the provisions of the SBP, whatever portion of the Social Security entitlement which would be based solely on Social Security credits attributable to the insured person's military service would be deductible from the annuity. We are unaware of any language in the SBP law or in its legislative history which would support the proposition that the words "to which the widow * * * would be entitled * * *" as used in 10 U.S.C. 1451(a), relate to a Social Security benefit based on a PIA chart which had become obsolete prior to the time a widow would be entitled to such benefit at age 62. Instead, it appears proper to use the current PIA chart applicable at the time of the SBP annuity payments from which the offset is being made.

Regarding the actual calculation of the offset, that matter was the subject of our decision 53 Comp. Gen. 733 (1974), copy enclosed. We presume that the Finance and Accounting Center is calculating the offset in accordance with that decision.

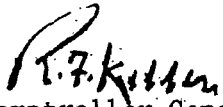
Concerning Major Matthews' statement regarding the continuous erosion of SBP annuities because of periodic increases in Social Security benefits, that does not appear to be the case since, in conjunction with the provisions of 10 U.S.C. 1451(a), subsection 1451(c) provides that whenever military retired pay is increased under 10 U.S.C. 1401a, each SBP annuity will be increased by the same percentage factor before any reductions are made, including that required as a Social Security offset. Under 10 U.S.C. 1401a retired pay is subject to biannual cost-of-living increases. Thus, while the amount of the Social Security offset increases periodically, so does the SBP annuity.

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We trust this serves the purpose of your request and regret that our response could not be more favorable to your constituent.

As you requested, Major Matthews' letter is returned.

Sincerely yours,


Deputy Comptroller General
of the United States

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