DECISION
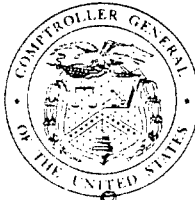
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D.C. 20548

[Reduction of Survivor Benefit Plan Annuity by Amount of
Widow's Social Security Payment]

FILE: B-192117   DATE: September 24, 1979

MATTER OF: Mrs. Marjorie S. Nester

DIGEST: The widow of a Survivor Benefit Plan (SBP)
          participator, who had some post-1956 Social
          Security covered military service, became
          entitled to Social Security payments based
          on the deceased member's total Social
          Security covered earnings, including the
          covered military service. For the purpose
          of the reduction in her SBP annuity required
          by 10 U.S.C. 1451(a) for Social Security
          payments attributable to military earnings,
          it is not necessary that the member acquire
          a fully insured status based solely on
          Social Security covered military earnings.
          Since generally Social Security payments
          received are enhanced by military covered
          quarters, the SBP annuity is to be reduced
          by the amount of the Social Security payment
          based on the member's military service.

     The question to be decided here is whether the Social
Security offset of a Survivor Benefit Plan (SBP) annuity is
required by 10 U.S.C. 1451(a) based on the member's Social
Security covered military earnings although the member did
not acquire his Social Security insured status based on the
military covered earnings alone. The answer is yes.

     The member in the case before us, Lieutenant
Colonel Norman W. Nester, USAR, was retired effective
August 1, 1965, under the provisions of 10 U.S.C. 1331-1337,
having elected survivor coverage for spouse only under the
Retired Serviceman's Family Protection Plan (RSFPP). On
December 1, 1972, Colonel Nester elected into the then newly
enacted Survivor Benefit Plan, 10 U.S.C. 1447-1455, to pro-
vide maximum coverage for his spouse, and cancelled his
RSFPP coverage.

     Colonel Nester died December 2, 1973, and an SBP annuity
was established for his widow, Marjorie S. Nester, effective
December 3, 1973. However, pursuant to 10 U.S.C. 1451(a),

since Colonel Nester had Social Security covered earnings
as a result of the performance of active military service
after 1956, Mrs. Nester's SBP annuity was reduced.

Mrs. Nester expresses the view that her annuity should
not be reduced. It is her contention that in order for her
annuity to be reduced by Social Security benefits received,
her deceased husband had to have acquired a fully insurable
Social Security status based solely on his military service
and that any coverage earned outside his military service
is not to be taken into account in establishing that offset.
According to Mrs. Nester, her husband would need 19 quarters
of coverage to be eligible for Social Security coverage
based solely on his military earnings. It is her position
that since he had only four military covered quarters, there
is no basis for reducing her SBP annuity.

The Army Finance Center, on the other hand, contends
that 10 U.S.C. 1451(a), which requires offset, is to be
applied whenever a widow is entitled to Social Security
benefits. However, the computation for the offset is based
only on the military earnings portion of the Social Security
coverage.

We believe that the position taken by the Army Finance
Center is the correct interpretation to be given the offset
provision. Section 1451(a) provides for the reduction
(offset) in the SBP annuity based on the Social Security
benefit in part as follows:

> "* * * the monthly annuity shall be reduced
> by an amount equal to the amount of the survivor
> benefit, if any, to which the widow * * * would
> be entitled * * * based solely upon /military/
> service by the person concerned * * *."

On page 30 of Senate Report 92-1089, 92d Cong., 2d Sess.,
the following statement is made regarding the Social Security
offset:

> "* * * when the widow reaches age 62,
> her /SBP/ annuity based on her husband's
> military retired pay would be offset by the
> equivalent of the social security payment
> which is <u>attributable to her husband's
> military service.</u>"

And on page 31, it is explained further that:

> "There is no reduction because of the social
> security benefits that may have been earned as
> a result of the husband's employment in his post-
> retirement years * * *. It cannot be overempha-
> sized 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 as a result
> of active duty in military service."

See also the similar statements in House Report No. 92-481,
92d Cong. 1st Sess., pages 14-15.

Enactment of the SBP did not modify Social Security
entitlements. However, the SBP was intended to be integrated
with Social Security and therefore, it provides for reduction
in SBP payments on account of the portion of Social Security
payments predicated on the member's military service. It was
also recognized that in many cases the member would have
other Social Security covered earnings which are nonmilitary
and which would not subject the SBP annuity to further
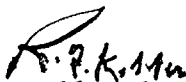reduction. See generally 57 Comp. Gen. 339 (1978).

When an individual, such as Mrs. Nester, becomes eligible
for a widow's Social Security benefit, all quarters of her
deceased husband's coverage, both military and nonmilitary,
would be taken into account before the amount of the Social
Security benefit to which she is entitled is established and
paid. Generally, when military covered quarters are included,
the Social Security benefit received is enhanced, whether or
not the military covered earnings would be sufficient, alone,
for the member to have achieved insured status. It is that

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enhancement to which the section 1451(a) required reduction
is directed. See 53 Comp. Gen. 733 (1974) and 57 Comp.
Gen. 339, 341-343, supra.

    Thus, it is our view that the SBP annuity must be
reduced by the amount of a widow's Social Security pay-
ment based on the deceased member's post-1956 military
service.

    Accordingly, deductions should continue to be made
from Mrs. Nester's SBP annuity, if otherwise correct.

                        Deputy   Comptroller General
                                 of the United States