



Smith

The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Barbara Schlech--Social Security Offset from SBP
File: B-233404.2
Date: January 26, 1990

DIGEST

When a widow's Survivor Benefit Plan annuity is reduced because she receives social security benefits based on her husband's lifetime earnings, the reduction cannot exceed the amount she actually receives from Social Security.

DECISION

We are asked whether the social security offset against a Survivor Benefit Plan (SBP) annuity should be reduced when the offset exceeds the beneficiary's actual social security entitlement.^{1/} For the following reasons the offset must be reduced.

Rear Admiral Walter F. Schlech retired from active duty on July 1, 1970. After SBP was enacted, he elected full spouse-only coverage for his wife, Barbara Schlech. Admiral Schlech died January 25, 1985; and Mrs. Schlech immediately began receiving an SBP annuity. Apparently, Mrs. Schlech also began receiving widow's social security benefits in November 1985. When she reached age 62 in November 1987, her SBP annuity became subject to a social security offset required by the law.

Admiral Schlech began receiving reduced social security benefits at age 62. As a result Mrs. Schlech, whose social security benefit is based entirely on her husband's earnings, receives reduced social security benefits. Additionally, the social security benefits payable to Mrs. Schlech are further reduced because of her election to

^{1/} This request for an advance decision from the Disbursing Officer of the Navy Finance Center in Cleveland was forwarded to us by the Department of Defense Military Pay and Allowance Committee. The Committee assigned number DO-N-1486 to their submission.

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receive the widow's benefit prior to the time she reached full retirement age. The Navy computed her offset using the unreduced benefit amount. The offset was then adjusted to reflect Admiral Schlech's reduced social security benefits. However, since Mrs. Schlech received social security benefits prior to full retirement age a further reduction in those benefits was required. As a result the SBP offset is greater than the social security benefits she receives. She contends that the offset should not exceed her actual social security benefit.

In 1972 Congress established SBP (10 U.S.C. §§ 1447-1455) to complement the social security benefits of surviving military dependents. Under the plan a retired member may elect to provide an annuity for his dependents. The member accepts a reduced amount of retired pay during his life, and upon his death an annuity is payable to the eligible survivor. However, when the survivor is eligible for social security benefits based on the member's military service in addition to the SBP annuity, a deduction of an amount equal to the social security benefit is made from the SBP annuity. 10 U.S.C. § 1451.2/

We addressed the offset issue in Dora M. Lambert, 62 Comp. Gen. 471 (1983), which dealt with a widow who received reduced social security benefits because her husband had received social security benefits before he reached age 65. In that decision, we noted that a widow's offset should be calculated so as not to exceed the amount of social security benefit she actually receives. We based our decision on the legislative history of the law, which shows that the offset provision was not intended to reduce the survivor's combined social security benefit and SBP annuity to less than 55 percent of the member's retired pay. By reducing the SBP annuity by more than the widow's actual social security

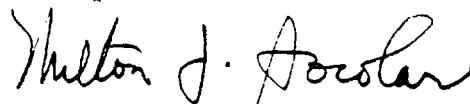
2/ We note that in amending 10 U.S.C. § 1451 through legislation contained in Public Law 99-145, § 711, November 8, 1985, 99 Stat. 666, Congress eliminated the social security offset and established a two-tier system under which the survivor would receive 55 percent of retired pay before age 62 and 35 percent thereafter in recognition of entitlement to social security. See H.R. Rep. No. 81, 99th Cong., 1st Sess. 251, reprinted in 1985 U.S. Code Cong. & Ad. News 472, 527-528. Provision was made, however, to retain the social security offset for persons who, like Mrs. Schlech, were eligible Plan beneficiaries on October 1, 1985, if that were advantageous to them. See 10 U.S.C. § 1451(e) (1988).

benefit the combined benefit may be reduced to less than 55 percent of the member's retired pay. 62 Comp. Gen. at 472-73.

A related case, Lucille Eaton, 65 Comp. Gen. 813 (1986), dealt with a widow who received reduced social security benefits because she applied for social security before she reached age 62. For similar reasons, we said in that decision that a SBP offset may not exceed the amount of social security benefit the survivor actually receives.

In the present situation, the fact that Mrs. Schlech's social security benefit is subject to reduction because both she and her husband began receiving Social Security benefits before full eligibility age does not change our decision that a widow's offset may not exceed the amount of social security she actually receives.

Accordingly, Mrs. Schlech's SBP annuity should be adjusted, effective November 1987, so that the offset does not exceed her actual social security benefit.

for 
Comptroller General
of the United States