



United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-266280

March 8, 1996

The Honorable Paul D. Coverdell
United States Senator
100 Colony Square, Suite 300
1175 Peachtree Street, NE
Atlanta, Georgia 30361

Dear Senator Coverdell:

This is in response to your letter of September 13, 1995, on behalf of Mrs. Mary Gralley, who is seeking a reduction in the amount of the social security offset (SSO) being applied to her Survivor Benefit Plan (SBP) annuity, based on the calculations of the Defense Finance and Accounting Service (DFAS). Mrs. Gralley's husband, Technical Sergeant Phillip W. Gralley, retired from the Air Force in 1962. Subsequently, he elected an SBP annuity for his wife payable following his death; he died on May 8, 1994.

Congress established the SBP (10 U.S.C. §§ 1447-1455) in 1972 to complement the social security benefits of surviving military dependents. It was intended to provide a bridge for survivors by providing them income for the period between the death of the member and date of the widow's or widower's eligibility for social security benefits. Once the surviving spouse is eligible for social security benefits, the SBP annuity is offset, in recognition of the fact that social security benefits are available. See 10 U.S.C. § 1451. Mrs. Gralley accepts the appropriateness of the offset, but questions the rules governing the manner in which it is applied and calculated.

There are two methods provided for in the SBP statute by which social security benefits are considered in determining the amount an SBP annuity should be reduced. In the case of members who did not become eligible for retirement until after October 1, 1985, a surviving spouse receives 55 percent of the base amount of the member's retired pay until he or she reaches age 62. After age 62, the annuitant receives 35 percent of the base amount of the member's retired pay.

For survivors of members eligible to receive retired pay on or before October 1, 1985, an optional offset calculation is available if it is more advantageous to the annuitant. This method assumes that the member lived to age 65 and that social security benefits as a result of his or her spouse's earnings begin at age 62, the age when the offset commences. Department of Defense Directive 1332.27, which describes the calculation of the offset, states that "For the purpose of this calculation, the member is assumed . . . to have worked in social security covered employment only while on active duty." DOD Directive 1332.27 § 401a.(1) (1974).

The DFAS calculation therefore bases the offset solely on social security benefits a survivor received for the decedent's active military service and does not account for the survivor's benefits attributable to social security payments resulting from any employment in which the member engaged as a retiree. Thus, if a military retiree contributed substantially to social security after leaving the armed forces, these post-military contributions are not part of the calculation.

Mrs. Gralley's annuity amount is based on the first of these methods, 35 percent of the base amount, because DFAS found that method more favorable to her.

Mrs. Gralley questions DFAS' conclusion. She contends that if the offset were properly calculated, the use of the second method would be more beneficial to her. In calculating the offset, she believes, DFAS should have considered her husband's post-military contributions to social security as well as his military contributions. Thus, according to her, the offset should have been calculated based on her husband's earnings from both military and civilian employment and the two should have been prorated to determine the amount of benefits attributable to military service. If DFAS had done the calculation on this basis, she reports, the amount of the offset would have been \$53, instead of the \$162.40 used by DFAS.

As indicated, however, Mrs. Gralley's method of calculating the offset is contrary to the DOD regulation. In contrast, the method of calculation used by DFAS is consistent with the governing statute and has been approved by the United States Claims Court (now the United States Court of Federal Claims) and our Office. See Kinne v. United States, 21 Cl. Ct. 104 (1990) and 53 Comp. Gen. 733 (1974). (Copies enclosed.)

Mrs. Gralley has raised an additional point. Sergeant Gralley accumulated only 24 quarters of contributions to social security based on his active duty military service. For his survivor to be eligible for social security benefits based solely on his pre-retirement military earnings, he would have had to accumulate 26 quarters of contributions. Mrs. Gralley asks why any offset applies in her situation, if under the social security program, she would not have been eligible for any social security benefits based solely on his earnings during active duty. Sergeant Gralley worked approximately 15 years in private sector employment as a retiree, from 1962 to

1977, according to Mrs. Gralley. Thus, in answer to Mrs. Gralley's question, benefits based on the 24 quarters accrued once Sergeant Gralley worked an additional 2 quarters in post-retirement employment. When an individual, such as Mrs. Gralley, becomes eligible for a widow's social security benefit, all quarters of her deceased spouse's coverage, both military and nonmilitary, are taken into account before the amount of the social security benefit to which she is entitled is established; however, as noted, only the military quarters are used to compute the offset amount. See Marjorie S. Nester, 58 Comp. Gen. 795 (1979), copy enclosed.

We trust this answers your inquiry.

Sincerely yours,

/s/Seymour Efros
for Robert P. Murphy
General Counsel

Enclosures

B-266280

March 8, 1996

DIGEST

In establishing widow's social security benefit, her spouse's military and nonmilitary earnings are considered. Once this benefit is established, the fact that spouse's military earnings alone were not sufficient to establish the benefit does not relieve widow's survivor benefit (SBP) from the requirement of the social security offset. Calculation of the SBP offset is proper where only post-1956 military earnings are used in making offset calculation without consideration of post-retirement civilian earnings, which formula has been approved by General Accounting Office and the United States Claims Court.