



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

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B-201490

March 10, 1981

[Questions Concerning Survivor Benefit Plan Coverage]

Do not make available to public reading

The Honorable Tony P. Hall  
House of Representatives

Dear Mr. Hall:

Reference is made to your letter dated December 4, 1980, enclosing for consideration and report a letter dated November 25, 1980, to you from Colonel Henry Shumaker, USA, Retired, concerning his Survivor Benefit Plan (SBP) coverage for his wife and the cost of such coverage under the SBP, 10 U.S.C. 1448-1455, et seq. In this regard, he refers to our decision, B-192470, January 24, 1980 (59 Comp. Gen. 225).

First, we wish to point out that we have no information concerning Colonel Shumaker's service and participation in any survivor annuity program other than the information contained in his letter.

According to Colonel Shumaker, he retired from the Army after 20 years of service and elected into the SBP, selecting spouse coverage. He apparently was thereafter employed by the Federal Government in a civilian capacity and retired from the civil service after 15 years of service, and elected to provide survivor annuity coverage for his spouse under the civil service retirement system.

Colonel Shumaker says that under our ruling, his spouse could only receive an annuity under the civil service survivor annuity program even though he has contributed to both plans for many years. He also says that he is unable to receive a refund of the amount he paid for the military SBP coverage even though his wife would be unable to receive any of the benefits. Further, he expresses the view that since his military and civilian service was performed consecutively, rather than concurrently and having paid for both coverages, all benefits have been earned as a matter of law.

Our decision 59 Comp. Gen. 225, copy enclosed, was rendered in reconsideration of our earlier decision B-192470, January 3, 1979, also enclosed. Those two decisions involved the question of the availability of coverage for a minor dependent of a deceased member under both the military SBP and the civil service survivor annuity programs. Since

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Colonel Shumaker indicates that his questions relate to spouse coverage those decisions would not be specifically applicable to his case.

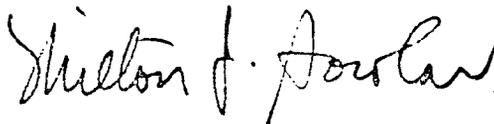
It is noted that 5 U.S.C. 8336(c) provides that, for the purpose of establishing eligibility for a civil service annuity, an employee may add his years of military service to his years of civilian service, but not if he is receiving military retired pay for that service. If such individual waives receipt of military retired pay, then those years of service may be used.

If Colonel Shumaker combined his service at the time he retired from the civil service and if he elected a civil service survivor annuity, monthly premiums for that coverage would be deducted from his civil service annuity. This would guarantee his survivor an annuity of 55 percent of his civil service annuity (unless a lesser survivor annuity was specified), which would be computed to include his years of military service. Thus, survivor benefits for his spouse would be predicated upon a combination of military and civilian service.

With regard to the matter of concurrent versus consecutive periods mentioned by Colonel Shumaker, we presume he is referring to a military active duty status and a civilian employment status. Other than the specific provisions governing short periods of training duty performed by Reserves of the Armed Forces not on extended active duty, we are not aware of any authority for individuals on active duty in the military to be active civilian employees of the Federal Government. See 5 U.S.C. 6323; compare 10 U.S.C. 973 and 974.

We trust this will serve the purpose of your inquiry and regret a more favorable reply cannot be made.

Sincerely yours,



Acting Comptroller General  
of the United States

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