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Journal - Office of Legislative Counsel
Friday - 18 September 1970

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8. (Secret - JGO) Met with Mr. Vincent Augliere, Staff Administrator, Subcommittee on Foreign Operations and Government Information, House Committee on Government Operations, as a follow up to the briefings provided earlier in the week by [REDACTED] FE Division. I confirmed the information provided during the briefing concerning [REDACTED] and confirmed that the Agency [REDACTED].

Mr. Augliere again expressed his appreciation for the briefings and indicated that he saw no need to pass on any of the information since the current Subcommittee investigations should not interfere in any way with Agency activities. See Journal item of 14 September 1970.

9. (Internal Use Only - JGO) Met with Mr. William H. Cook, Counsel, House Armed Services Committee, and reviewed with him the draft report of the Special Subcommittee on Survivor Benefits which will be forwarded to the Subcommittee members later in the day. Mr. Cook advised that no consideration has been given to the question of anticipatory waiver of retirement pay by retired military personnel who are employed under Civil Service. He noted that the draft legislation, which is an entirely new bill drafted by the Subcommittee, models itself largely on Civil Service retirement benefits for survivors. He feels that the question of anticipatory waiver might well be handled under section 1452 of the proposed bill and suggested that we might want to talk to Paul Bender of DOD who is working on the bill with the Subcommittee. OGC and Personnel have been advised.

10. (Unclassified - JGO) Met with Captain William Hogan, House Armed Services Committee staff, and received back from him the copy of Mader's Who's Who in CIA? that had been loaned to him.

11. (Confidential - JGO) Met with Frances Christy, Immigration and Nationality Subcommittee, House Committee on Judiciary staff, who told me that the request for report on H. R. 18715 has not yet been received from Representative Charles M. Teague (R., Calif.). In all probability the request is in the Chairman's office and has not yet been forwarded to the staff. Miss Christy will keep me advised.

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STATEMENT BY ANDREW E. RUDDOCK, DIRECTOR
BUREAU OF RETIREMENT, INSURANCE, AND OCCUPATIONAL HEALTH
UNITED STATES CIVIL SERVICE COMMISSION

BEFORE

SPECIAL SUBCOMMITTEE ON SURVIVOR BENEFITS
TO ACTIVE DUTY AND/OR RETIRED MILITARY PERSONNEL
HOUSE ARMED SERVICES COMMITTEE

Thursday, July 9, 1970
10:00 A.M.

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I am glad to appear before your special subcommittee to discuss the survivor benefits under the Civil Service Retirement System provided to Federal employees during their period of work and after their retirement. As you requested, I will also allude to the main problem affecting benefits for survivors of employees who have retired from military service and are now working for the Federal Government as civilians.

By way of background, I would first like to mention a few statistics: The dependents of more than 2.7 million civilian employees of the Federal Government are now protected by the Civil Service Retirement System against loss of income resulting from death of the employee. As of June 30, 1969, we had on the Civil Service Retirement rolls nearly 630,000 retired Federal employees plus over 280,000 survivors

of Federal employees, most of them widows and children. These retired employees and survivors are receiving checks totaling \$193 million a month.

The Civil Service Retirement System is a contributory one. Employees regularly pay 7 percent of their salary into the retirement fund. This gives rise to two kinds of death benefits, survivor annuities and lump sum payments.

A lump sum benefit, consisting generally of the employee's contributions, is payable upon his death if he is not survived by a widow or child who qualifies for annuity. If a qualified widow or child survives, a survivor annuity is payable.

To qualify for survivor annuity, the employee, and the widow and child, must meet certain legal requirements which, in general, are as follows:

A. The employee must have--

1. completed at least 18 months of civilian service, and
2. died while employed in a position under the retirement system.

B. The widow must--

1. have been married to the employee for at least two years immediately preceding his death, or
2. be the parent of a child born of the marriage with the employee.

(Benefits are payable to a widower if he meets these requirements and was dependent on the employee because of physical or mental disability.)

C. The child must--

1. be under age 18, (or under age 22 if he is a student) and
2. be unmarried.

In a case where the legal requirements are met, the widow is paid a survivor annuity amounting to 55 percent of the annuity earned by the deceased employee's length of service and high average pay. For employees with only short service the retirement law guarantees a minimum annuity. This minimum amounts to 55 percent of the smaller of--

- a. 40 percent of the deceased employee's high average pay, or
- b. his regular annuity obtained by increasing his actual service by the time between his death and the date he would have reached age 60.

When the employee is also survived by eligible children, each child is paid an annuity in whichever of the following amounts is the least:

- a. 60 percent of the employee's high average pay divided by the number of children, or

- b. \$2,700 divided by the number of children, or
- c. \$900.

If the child is what we call a double orphan, that is, where neither parent survives, the corresponding amounts are higher, namely, 75 percent instead of 60 percent, \$3,240 instead of \$2,700, and \$1,080 instead of \$900. I might add that the dollar amounts I have mentioned are subject to automatic increases as the cost of living, as measured by the Consumer Price Index, goes up.

Survivor benefits to eligible children of a deceased retired employee are payable under the same conditions and in the same amounts as to the children of a deceased active employee.

A survivor benefit is payable to the widow of a deceased retired employee only if, at the time he retired, he had accepted a reduced annuity to himself with a survivor benefit continuing to his wife designated at the time of retirement. The reduction which the retired employee must take in his own annuity is $2\frac{1}{2}$ percent of the first \$3,600, plus 10 percent of any annuity in excess of \$3,600. The employee may designate all or a portion of his annuity as the base on which his widow's annuity is computed. The widow will receive a survivor annuity of 55 percent of whatever base the retired employee designated.

As I have indicated, civil service annuities (including widows' annuities) are primarily a function of average pay and length of service. As a general rule, active military service is creditable, along with civilian, in computing annuities. However, service which forms the basis for military retired pay, with certain exceptions, may not be credited toward civilian retirement unless the military retired pay is waived.

One of the main problems in this connection is that active civilian employees who are also in receipt of military retired pay die without having waived their military retired pay and their widows do not get the advantage of having the long years of military service included in computing the amount of civil service survivor annuities.

Some military retirees have tried to execute a future waiver of their military retired pay which would become effective only upon death. The Comptroller General, however, ruled in 1966 that such advance waivers are not permissible. In pertinent part, the Comptroller General said:

It is our opinion, however, that existing law does not contemplate that any civilian employee prior to retirement may take any action by waiver, election, or otherwise with respect to active military service to be effective presently or in the future for the purpose of computing his civil service annuity. Had the Congress intended the result suggested in the Department of Defense Military Pay and Allowance committee action we believe it would have made some provision to accomplish that result.

Existing law provides an opportunity for a civilian employee to elect to receive credit for active military service in the computation of his annuity under the civil service retirement program at the time of civilian retirement by then surrendering his military retired pay, at which time he may elect to provide an annuity for his widow with credit for active military service in her survivor's annuity. Since we know of no provision of law under which such election can be executed in advance on the basis suggested in the submission, we think that the resolution of the problems here involved, including the "apparent inequity" mentioned in the committee action discussion, should be left to the Congress.

I will be glad to try to answer any questions you may have.

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Mr. Gallagher, SA-AA

SAF-GC/Mr. Donahue/al/77430/6 June 66

8 JUN 1966

MEMORANDUM FOR DIRECTORATE OF ACCOUNTING AND FINANCE, AFAAC
ATTENTION: LT. COLONEL GIULI

SUBJECT: Advance Waiver of Retired Pay

5 U.S.C. 2253(b), treating of the computation of years of creditable service for purposes of Civil Service retirement, states that "An employee or Member [of Congress] shall be allowed credit for periods of military service prior to the date of the separation upon which title to annuity is based; however, if an employee or Member is awarded retired pay on account of military service, his military service shall not be included [with exceptions not relevant here]." The Federal Personnel Manual Supplement 831-1, Subchapter S3-5f, states that "an employee or annuitant who is in receipt of military retired pay which bars credit for military service . . . may elect to waive the retired pay and have his military service added to his civilian service."

We have informally learned from the Civil Service Commission that retired military personnel may exercise this waiver right at any time so that a retired military man may receive the retired pay he is entitled to under the Dual Compensation Act (P.L. 88-448, Aug. 19, 1964, 5 U.S.C. 3102) while he is employed as a civil servant and then waive that pay when he becomes eligible for civilian retirement. If, however, such a person dies before his civilian retirement and before waiving his retired pay, his Civil Service survivor's annuity will not take into account his years of military service.

The Secretary of the Air Force recently received a letter from a retired officer now employed in a civilian capacity with the Federal Government asking if it is possible for him to waive his military retired pay in advance, as of the day before his Civil Service retirement or the day before his death, whichever comes first.

SAF-GC Subject
SAF-GC Reading
SAF-AAM
Mr. Comarow
Mr. Donahue

If such a waiver were effective, it would eliminate an apparent inequity in the system, in that there seems to be no reason why a man who dies before his retirement should not be entitled to have his creditable federal service computed for his survivor annuity in the same manner as his contemporary who retires. On the other hand, there is no specific provision in the statute which authorizes waiver in advance contingent upon the happening of some event. Further, the controversial nature of the Dual Compensation Act and the large number of people potentially affected by such a procedure make the question a sensitive one.

The Civil Service Commission, we have informally determined, takes the position that it will not question the certificate of a military department that a retired member was not in receipt of retired pay as of a given date. This position places on the Department the burden of determining the validity of such advance waiver. The matter thus ceases to be a question of creditable service under the Civil Service Retirement Act, properly for the determination of the Civil Service Commission (see 41 Comp. Gen. 460), and becomes a matter of entitlement to military retired pay properly within the charter of the Military Pay and Allowance Committee to regulate subject to the rulings of the Comptroller General.

We would therefore recommend that the Committee, after obtaining formal confirmation of the Commission's position, submit to the Comptroller General a question substantially as follows: "May the military departments properly certify to the Civil Service Commission that a retired member is not in receipt of retired pay as of the date of his death or the date of his civilian retirement if such serviceman while in receipt of military retired pay executes an advance waiver of such pay as of the day before the date of his death or the day before the date of his retirement, whichever comes first?"

[Signed]

MURRAY COMAROW
Assistant General Counsel

cc: Mr. Gallagher, SAF-AA

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AVAILABLE



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20543

November 11, 1966

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Dear Mr. Secretary:

Reference is made to letter of October 7, 1966, from the Assistant Secretary of Defense (Comptroller), requesting a decision whether it is proper for a military Department to certify to the Civil Service Commission that a retired military member, employed as a civilian Government employee, is not in receipt of military retired pay on the date of his death or the date of his civilian retirement if such member, while in receipt of retired pay, executes an advance waiver of his military retired pay to be effective the day before the date of his death or the day before the date of his civilian retirement, whichever occurs first. A discussion relating to the matter is contained in Committee Action No. 364 of the Department of Defense Military Pay and Allowance Committee.

Section 8336 of title 5, U.S. Code, provides that a civilian employee of the Government with the requisite age and creditable service is immediately entitled to an annuity under the civil service retirement program upon separation from the service. Section 8341 provides for a survivor's annuity to the widow of a civilian employee with the requisite service who dies while employed, and to the widow of a retired employee who has not declined such annuity. The annuity of such a retired employee is reduced as provided in section 8339(1) in order to provide an annuity to his widow. Section 8341 provides that the annuity of the widow commences on the day after the employee dies. Section 8345(b) provides that the annuity of an employee commences on the day after he is separated from the service. Section 8347(a) provides that the Civil Service Commission shall administer the civil service retirement program and prescribe such regulations as are necessary and proper to carry out the provisions of law authorizing this program.

Section 8332(c) of title 5, U.S. Code, provides, insofar as it here material, that an employee shall be allowed credit for periods of military service, but that "his military service may not be credited" if he is awarded retired pay on account of military service. Section 8332(d) also provides for the exclusion of military service performed after 1956 if the member or his widow is or would be eligible for old age and survivor insurance benefits under the Social Security Act based upon his wages and self-employment income.

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Section 531.301(a) of the Federal Personnel Manual Supplement 531.301, Appendix 5, provides that:

"An applicant for annuity who is in receipt of retired pay which bars credit for his military service, may elect to surrender the retired pay and to have his military service added to his period of civilian service for the purpose of obtaining a greater benefit in the form of annuity. When it appears on the adjudication of a claim for annuity that the employee will benefit from relinquishment of retired pay and inclusion of his military service, the Bureau of Retirement and Insurance shall so advise him and permit him to exercise the right of election."

The committee action points out that a retired military member may receive the military retired pay he is entitled to under the Dual Compensation Act (5 U.S.C. 3102) while employed as a civilian employee and that when he becomes eligible for civilian retirement he may "waive" his military retired pay and have his military service added to his civilian service for civil service retirement annuity purposes. When the civil service annuitant who has waived his military retired pay dies, his military service also is credited in computing the annuity payable to his widow, since the computation of the widow's annuity is based upon the annuity of the retired employee.

The committee action further points out that, if the retired military member employed as a civil servant dies before his civilian retirement and before waiving his retired pay, the computation of the civil service annuity payable to his survivor will not include his years of military service, and that there is no provision of law which authorizes waiver in advance contingent upon the happening of some future event.

The effect of what is here proposed would be to permit a retired member of the military service receiving retired pay, and who is also a civilian employee, to continue to receive his military retired pay (to the extent authorized by the Dual Compensation Act) during his lifetime and at his death before becoming entitled to an annuity as a civilian to permit his widow to receive an annuity under the civil service retirement program based upon his service both in the military service and as a civilian employee (as if he had not received such

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military retired pay). In other words, the military retiree would receive the full unannulled benefit of his military retired pay during his lifetime and his widow would receive the maximum civilian employee survivor's annuity (as if he had not received military retired pay).

There would, of course, be no purpose in permitting an advance waiver of military retired pay in instances where the employee or his widow might not thereafter become entitled to a civil service annuity. It would happen if he died after filing such waiver but before completing the five years of qualifying service proscribed in Section 8333. The same result would follow in a case involving a deferred retirement under section 8333, if the person concerned died while reaching the age of 62. In such circumstances and since the statute does not appear to contemplate a computation of the amount of the applicable annuity until the employee dies or becomes entitled to an annuity in his own right, the absence of statutory language permitting an advance waiver of military retired pay would seem to preclude such action.

Whether the widow of a civilian employee may be entitled to receive an annuity, as such widow, which is computed by including active military service as creditable service is, of course, for determination by the Civil Service Commission. It is our opinion, however, that existing law does not contemplate that any civilian employee prior to retirement may take any action by waiver, election, or otherwise with respect to active military service to be effective presently or in the future for the purpose of computing his civil service annuity. Had the Congress intended the result suggested in the committee action we believe it would have made some provision to accomplish that result.

Existing law provides an opportunity for a civilian employee to elect to receive credit for active military service in the computation of his annuity under the civil service retirement program at the time of civilian retirement by then surrendering his military retired pay, at which time he may elect to provide an annuity for his widow with credit for active military service in her survivor's annuity. Since we know of no provision of law under which such election can be executed in advance on the basis suggested in the submission, we think that the resolution of the problems here involved, including the "apparent inequity" mentioned in the committee action discussion, should be left to the Congress. Consequently, the question presented is answered in the negative.

Sincerely yours,

Frank H. Watkins

Assistant Comptroller General
of the United States

The Honorable
The Secretary of Defense

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CONCURRENCE	INFORMATION	SIGNATURE	
Remarks:			
<p>Please note discussion on p. 5 re waiver in advance. We tried, didn't work. Is it possible that the Congress may not now make it possible to have retired military pay in advance?</p>			
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	APPROVAL	DISPATCH	RECOMMENDATION
	COMMENT	FILE	RETURN
	CONCURRENCE	INFORMATION	SIGNATURE

Remarks:

Please note [REDACTED] buck slip to me on [REDACTED] statement. I have also attached our earlier papers on this question of waiver of retired military pay. Could you please check with Armed Services and ascertain if there is pending legislation on the subject? Also, I do not believe it inappropriate for us to give this a nudge, all in common good.

[REDACTED]

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