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The Director of Retirement Claims

The Associate General Counsel

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Question on the 1951 Amendments

Question: "If after reducing an individual's annuity or pension pursuant to the last paragraph of Section 3, as amended October 30, 1951, the amount of such individual's annuity or pension is less than the amount as of October 29, 1951 and the difference between such amounts is not, or is only partially, restored because the individual has a spouse entitled to receive a spouse's annuity from or after the effective date of the reduction, does the saving proviso in such paragraph operate, in the event the spouse's annuity is terminated, to restore the individual's annuity or pension to the amount he was entitled to receive on October 29, 1951?"

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"If the saving proviso to Section 3(b) operates to restore the annuity to the amount of the annuity on October 29, 1951 in the above example, what effect would such proviso have on a case in which a reduced annuity or pension was not restored to the amount as of October 29, 1951 because of entitlement of a spouse to an annuity and the spouse's annuity is reduced later (but not entirely eliminated) by reason of the spouse becoming entitled to an old age benefit on her own wage record?"

Answer: The saving clause in the last paragraph of section 3(b) as amended is as follows:

"Provided, however, That, in the case of any individual receiving or entitled to receive an annuity or pension on the day prior to the date of enactment of this paragraph, the reductions required by this paragraph shall not operate to reduce the sum of (A) the retirement annuity or pension of the individual, (B) the spouse's annuity, if any, and (C) the benefits under the Social Security Act which the individual and his family receive or are entitled to receive on the basis of his wages, to an amount less than such sum was before the enactment of this paragraph."

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It is quite plain from the language of this saving clause that its purpose was to protect the annuitant, who was such at the time the amendments were enacted, from having the reduction otherwise required because of entitlement, upon application, to a social security old-age benefit, result in lowering the total amount of the benefits to which he and his family might become entitled under both the Railroad Retirement Act and the Social Security Act on the basis of his employment below that to which they were then entitled. Before the enactment of the amendments the only benefits to which the annuitant and his family could be entitled under the Railroad Retirement Act on account of his own employment were, of course, his own retirement annuity. The only other family benefits payable under the Railroad Retirement Act, the spouse's annuity, could enter into the amount guaranteed by the saving clause only after the enactment of the amendments. The specific reference in the saving clause to the spouse's annuity as affecting the amount guaranteed, as well as the very complete explanation in the Senate Committee's report on this provision in the course of its enactment (Senate Report 890, 82nd Congress, page 24), shows that the spouse's annuity was to be used to help make up the guaranteed amount. Nothing in the language of the saving clause or its legislative history, however, requires or even suggests that the effect, once determined, of the spouse's annuity on the amount to which the annuitant would be entitled to receive under the saving clause was to continue on the basis so determined regardless of a later termination of or reduction in the spouse's annuity. In view of this, and since there is nothing otherwise to suggest that the protection to the annuitant extended by the saving clause is not to be permanent, it is my opinion that the annuitant's own retirement benefits should be increased when, and to the extent that, a termination of the spouse's annuity (as by death, divorce, or a child's attainment of age 18) or a reduction in the spouse's annuity (by acquiring entitlement to a benefit on her own employment) otherwise results in reducing the total amount to which an annuitant and his family are entitled to receive on the basis of his employment below the amount to which they are otherwise so entitled under the saving clause. **

PMJ:em

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CC: Director of Research

 ** Termination or reduction of the wife's benefit under the SSA to which the wife was entitled before October 30, 1951, would not, of course, operate to increase the amount payable to the annuitant under the saving clause since the effect of such termination or reduction would not be the result of the reduction provision of the last paragraph of section 3(b), as amended, and so the amount of this benefit would not be subject to protection by the saving clause.