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## SOCIAL SECURITY TO MEN IN SERVICE

The Social Security rights and benefits of men in the service, their dependents, and their survivors were materially affected by the

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<sup>37</sup> § 601, 50 U.S.C.A. 581 (Supp. 1941).

<sup>38</sup> "Sec. 601(3) Where a person in military service has been reported missing he shall be presumed to continue in the service until accounted for, and no period herein limited which begins or ends with the death of such person shall begin or end until the death of such person is in fact reported to or found by the Department of War or Navy, or any court or board thereof, or until such death is found by a court of competent jurisdiction: *Provided*, That no period herein limited which begins or ends with the death of such person shall be extended hereby beyond a period of six months after the time when this Act ceases to be in force."

<sup>39</sup> In World War I, The Soldiers' and Sailors' Civil Relief Act was not adopted until March 2, 1918, over a year after our nation's entry into the war, 40 STAT. 440 (1918), 50 U.S.C.A. App. §§ 101-165 (Supp. 1941).

Selective Training Service Act of 1940 which called many persons from employment into military service.<sup>1</sup> Their status and benefits under the old-age and survivors insurance and State unemployment insurance compensation Acts will be seriously prejudiced unless provision is made to safeguard them. The 1939 amendments to the Social Security Act with relation to old-age insurance, constitute the last elaborate consideration given to the subject by Congress.<sup>2</sup>

To equalize the burden of the war, property interests and rights of the soldiers<sup>3</sup> must be specially protected. The impairment of their social security rights by military service cannot be permitted.

The remedy should be more inclusive than the period of actual military service. Undoubtedly, many will be unemployed for some time after leaving military service because of their inability to regain their former jobs. As protection given to employed workers by the Act<sup>4</sup> is largely illusory, they have no real assurance that they will be returned to their former jobs upon completion of military service.

Section 8 (b) of the Act attempts to insure the draftee who has left a permanent position to enter military service that he will receive back his former job with "like seniority, status and pay."<sup>5</sup> In deciding whether an applicant is entitled to benefits of the Act, it must be decided that the job he left was "permanent," that he is still "capable of performance," and that it is not "impossible or unreasonable" to force his employer to re-employ. Thus the returning employee has little better than an even chance of regaining his old job and one who was self-employed is almost certain to be in economic straits upon returning to civilian life.<sup>6</sup> Persons in these situations should be assisted during their unemployment after termination of military service.

<sup>1</sup> *Convention Resolutions* (June, 1941) 1 LAW GUILD REV. 65. National Lawyers Guild urges Congress to enact legislation to amend Title II of the Social Security Act to provide that all persons in military service be deemed engaged in covered employment during the period of military service and for all or such part of one year immediately after termination of military service during which they are unemployed or employed at wages too low for coverage and that in order to assure eligibility for benefits such persons shall be deemed "fully insured" and "currently insured" under the Act for twice the period of time for which they are covered by reason of their military service.

<sup>2</sup> Linder, *Social Legislation and National Defense* (June, 1941) 1 LAW GUILD REV. 16; 53 STAT. 1360, 42 U.S.C.A. § 301 (Supp. 1939).

<sup>3</sup> Jensen, *Civil Relief for Soldiers and Sailors: A Critical Analysis* (1941) 36 ILL. L. REV. 325.

<sup>4</sup> 54 STAT. 890 (1940), 50 U.S.C.A. § 308 (Supp. 1941).

<sup>5</sup> Geraghty, *Judicial Protection of Individuals Under the Selective Training and Service Act of 1940* (1941) 36 ILL. L. REV. 320.

<sup>6</sup> *The Selective Training and Service Act of 1940 and the Lawyer* (June 1941) 1 LAW GUILD REV. 32.

Proposals to meet the problems; § 8 should be amended as follows:—

(1). To require an employer to take back to work with former seniority, status, and pay those who left their employment on being drafted, and, where for some reason this is not done, the returning draftee to be *absolutely* guaranteed such a job elsewhere, even if the government must provide it for him.

Many proposals have been suggested which range from the narrowest view that accumulated rights and benefits of persons covered by the Social Security Acts be "frozen," to the extreme view that unemployment compensation should be the vehicle for taking care of all monetary problems of persons in military service and their dependents.

When this country went to war in 1917, no problem of fitting a social security system into a military pattern faced the United States Government. At that time a system of war-risk insurance was established. The insurance principle was thus substituted for the pension plans of earlier wars.<sup>7</sup>

As the induction of selectees has been greatly accelerated since the declaring of war, the number of soldiers with dependents will naturally increase. The soldier can take advantage of the provisions of the National Service Life Insurance Act of 1940 to protect his family in case of death, but this insurance does not become operative during the time the insured man is alive.<sup>8</sup> A selectee's own fundamental wants are provided for by the government, but his family who is left behind must face alone the economic hazards of the day and subsist on whatever money they can eke out by their own efforts or seek charity.

The Public Assistance title of the Social Security Act was not, of course, designed to meet this situation.<sup>9</sup> As no direct allowance for the soldier's family is as yet allowed, the situation for some may be

(2). To provide that returning draftees who were self-employed (including self-employed lawyers) shall be given subsidies to re-establish themselves, or, if they wish, governmental employment at a rate of compensation not less than that earned prior to induction in military service.

<sup>7</sup> 40 STAT. 398 (1917), 38 U.S.C.A. § 502 (1926). *War Risk Insurance*. Provisions applied to all enlisted men in military and naval forces of the United States provided for allotments for their families. Upon application of each enlisted man, United States Government paid an allowance to each family not exceeding \$50 a month.

*Compensation for death or disability*

I. If death results from injury, monthly compensation:

- a. For wife alone \$25 (per month).
- b. Widow and one child \$35.
- c. Widow and two children \$47.50 with \$5 for each additional child.
- d. Widowed mother \$20.00.

II. Total Disability results from injury:

- a. Soldier to receive \$30.00 per month.
- b. If wife and no child living, \$45.00 per month.
- c. If wife and one child living, \$55.00 per month.

<sup>8</sup> 54 STAT. 1008 (1940), 38 U.S.C.A. §§ 801-918 (Supp. 1941).

<sup>9</sup> 53 STAT. 1362 (1939), 42 U.S.C.A. §§ 401-410 (a) (Supp. 1941).

*Primary Insurance Benefits:*

- (a) Every individual who is fully insured, has attained the age of 65, filed application for primary insurance benefits shall be entitled to receive a primary insurance benefit, for each month beginning with the month in which such individual becomes so entitled . . .

*Wife's Insurance Benefits:*

- (b) Provides for wife of an individual entitled to primary benefits shall be one half of primary insurance benefits of her husband.

come critical. Furthermore, the soldier's status with relation to both his Federal old-age and survivor's insurance and whatever credits he has earned under the State unemployment laws will be seriously jeopardized. The Social Security Act when enacted in 1935 provided for monthly insurance benefits<sup>10</sup> payable at age 65 to wage-earners in "covered employment."<sup>11</sup> Until the amendments of 1939, the qualified wage earner in covered employment for a certain number of calendar quarters was the only person entitled to monthly insurance benefits. When an employee leaves covered employment his period of service and his average wage both suffer.<sup>12</sup> As eligibility for old-age and survivors insurance depends upon service and average wages,<sup>13</sup> it is apparent that an employee's transfer to military service will jeopardize his security position unless amendatory legislation is enacted. Likewise, absence from private employment injures whatever credits the wage-earner has built up in State employment insurance.

Several remedies have been advanced:

(1) The President on October 8, 1940, approved the National Service Life Insurance Act<sup>14</sup> which provides for a system of voluntary insurance which may be purchased at low cost.

(2) Some 36 states have amended their Unemployment Insurance<sup>15</sup> Laws to "freeze" the unemployment benefit rights of "covered employees" who are now in military service. The selectee will not suffer any impairment of his rights while in the army.<sup>16</sup> The State of

*Child's Insurance Benefits:*

(c) Each child of individuals entitled to primary insurance benefits or of an individual who died currently or fully insured, such child's benefit of each month shall be one half primary insurance benefit of individual with respect to whose wages the child is entitled to receive such benefit . . .

*Widows Insurance Benefit:*

(d) Three-Fourths of primary benefits of deceased husband.

*Parents Insurance Benefit:*

(e) One half primary benefit of such deceased individual.

<sup>10</sup> *Ibid.*

<sup>11</sup> "Coverage" questions are concerned with whether the wage earner met the statutory requirements of "employment," or, whether such "employment" was excepted from the provisions of the Act, 53 STAT. 1373 (1939), 42 U.S.C.A. § 409(b) (Supp. 1941).

<sup>12</sup> Although they would not affect registrant's social security status, several measures now before Congress would increase the pay of selectees.

<sup>13</sup> Seitz, *Some Aspects of Coverage of the Social Security Act: "What is Employment"* (1941) 16 IND. L. J. 469 *passim*.

<sup>14</sup> 54 STAT. 1008 (1940), 38 U.S.C.A. § 801 (Supp. 1941).

<sup>15</sup> In this list of states are included New Jersey, Maine, New Hampshire, Vermont, Rhode Island, Connecticut, Massachusetts, Delaware, New York, Maryland, Ohio, Indiana, Illinois, Michigan, Missouri, and Wisconsin.

<sup>16</sup> IND. STAT. ANN. (Burns, Supp. 1941) § 52-1507. Where an individual enters active military or naval service of the United States of America for a period of not less than one (1) year, the benefit rights of such individuals shall be preserved. Provided, such individual (1) entered such service in or after April 1, 1941, (2) served at least ninety (90) days in such service, (3) was discharged from such service on or before Mar. 31, 1943.

Washington, however, in addition to "freezing" present rights provides that any persons who shall enter the naval or military service . . . shall be credited by the Commissioner of Unemployment Compensation and Placement with benefit rights equivalent to those which would have been available to him had he earned \$300 in the employment of an "employer" . . . during each complete calendar quarter while he is in the military service.<sup>17</sup>

Federal grants-in-aid to the states for general assistance have been proposed for the families of men in service. It has been suggested also that direct financial assistance be provided by the federal government to dependents of men in service. This plan would require the soldier to contribute at least \$15 per month to each dependent who seeks assistance whereupon the government would pay the remainder. In no case would an individual dependent get more than \$25 per month or any family more than \$75.

Several plans have been presented to remedy the difficulties arising as to old-age and survivors' insurance:

Under the first plan, the rights to old-age and survivors' insurance would be "frozen" as long as a person was in the service. His average wage would not be reduced nor would his insurance protection be diminished. This plan has some advantages, but it leaves the covered employee who has been called into service at a disadvantage as compared with the employee still at work, for the latter continues to increase his insurance credits.

A second plan similar to the first would continue the insurance system, freeze the rights of the selectee, and in case he dies in service, pay to his survivors whatever insurance he has built up at the time of his death. Thus the survivors would not only get insurance benefits under the Social Security Act, but would also be eligible for benefits under the Veterans Laws.<sup>18</sup>

A further plan of *automatic insurance* has been proposed in which all persons entering the armed forces, who had previously worked in covered employment, could automatically become insured under old-age and survivors' insurance. As certain classes of services are not considered as "covered" employment<sup>19</sup> such as "agricultural labor,"<sup>20</sup> "domestic service,"<sup>21</sup> "Government employees,"<sup>22</sup> and the like, another proposal has been suggested to extend such insurance to *all* men who

<sup>17</sup> Washington Acts 1941, c. 201, § 6, p. 594-5.

<sup>18</sup> 25 STAT. 173 (1888), 38 U.S.C.A. § 95 (1928). Widows' pensions to date from death of husband: All pensions granted under the general laws regulating pensions to widows in consequence of death occurring from a cause which originated in the service . . . shall commence from the date of the death of the husband. . . .

<sup>19</sup> Note, *The Problem of Coverage* (1941) 16 IND. L.J. 495.

<sup>20</sup> 49 STAT. 625, 639 (1935) As amended, 53 STAT. 1373 (1939), 42 U.S.C.A. §§ 409, 1011, 1107 (Supp. 1940).

<sup>21</sup> *Ibid.*

<sup>22</sup> The exception in the 1935 Act includes instrumentalities of the Federal Government, a state or states, and political subdivisions thereof. 49 STAT. 622 (1935), 42 U.S.C.A. §§ 410 (5), (6), 1011 (6), (7) (Supp. 1941).

enter the service. Every person then in military service would acquire rights to old-age insurance and his survivors would also be protected.

The principal features of this plan are incorporated in a bill which was introduced by Senator Hatch in the Senate on October 13, 1941.<sup>23</sup> Title II of the Social Security Act would be amended by adding a new section which provides:

Military Service Benefits: "Sec. 210(a). For the purposes of this title, an individual who is engaged in military service within the period beginning September 1, 1940, and ending with the termination of the emergency declared by the President on May 27, 1941, shall be deemed to have been paid for each month in which he performs any military service within such period wages equal to the greater of the following: (1) \$100, or (2) the monthly average (not counting any part of such monthly average which exceeded \$250) of the wages received by him during the four calendar quarters immediately preceding the calendar quarter in which he began a period of military service which commenced after September 9, 1939."

Senate Bill 1978 also contains a title "Unemployment Compensation Allowances on Termination of Military Service" which provides a Federal unemployment insurance allowance of \$15 per week for at least 16 weeks of unemployment following honorable discharge from military service. The applicant must have completed "not less than ninety days military service" subsequent to Dec. 31, 1940, and "prior to the expiration of six months after the termination of the emergency declared by the President on May 27, 1941." He must be registered with the Employment Service of the Social Security Board<sup>24</sup> and must hold himself in readiness for suitable work.

This program will be costly, but however great, it must be borne without complaint because in the last analysis, it is the people whose health and life constitutes the goal of our war and defense effort.<sup>25</sup> That is why social legislation is in truth the ultimate national defense. For it is only a nation which has something to defend which can adequately defend itself.

## RE-EMPLOYMENT

The demobilization of armies always creates a serious problem which lasts until the ex-soldiers are absorbed into civilian life. Thus, one of the outstanding features of social policy in the present war is the guarantee of reinstatement of employment on the termination of military service. The Selective Training and Service Act of 1940<sup>1</sup> contemplates not only the raising of an army, but also job restoration for the men of that army.

<sup>23</sup> S. 1978 (1941).

<sup>24</sup> *Ibid.*

<sup>25</sup> Linder, *Social Legislation and National Defense* (June 1941) 1 LAW GUILD REV. 16, 22.

<sup>1</sup> 54 STAT. 885 (1940), 50 U.S.C.A. §301 *et seq.* (Supp. 1940) Hereafter this act will be referred to by section number only. As to provisions of Service Extension Act of 1941, see 55 STAT. 627 (1941), 50 U.S.C.A. § 357 (Supp. 1941).