April 1972

The Constitutionality of the Disability Offset Provision, The D2037

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THE CONSTITUTIONALITY OF THE "DISABILITY OFFSET PROVISION"

The Social Security Act was enacted on August 14, 1935.\(^1\) The purpose of the Act, as stated in its preamble, was “to provide for the general welfare by establishing a system of federal old-age benefits.”\(^2\) Not until twenty-one years later, in 1956, did Congress amend the law to provide for the payment of social security disability benefits.\(^3\)

Before 1956, cash payments were made only upon death or retirement. Arguments were raised supporting and opposing the extension of benefits. Those favoring disability benefits suggested that the old-age and survivors’ benefits, to a considerable extent, rested on a general presumption of the likelihood of serious disabilities in later life. They pointed out that no magic was involved in the selection of age 65 as the point at which workers, no longer young, are forced out of the labor market because of disabilities. Statistics indicated that around a million persons between ages 50 and 65 would be working but for serious long-term disability.\(^4\)

Retirement protection was woefully incomplete because it did not provide a lower retirement age for those who were demonstrably retired by reason of a permanent and total disability. The recommendation was made to narrow that serious gap in the retirement protection system by providing for payment of benefits at age 50 to those workers who were forced into premature retirement because of disability.

Those opposing the concept of disability benefits felt that conditions for payment would be difficult to determine, that the conditions of payment had a completely different nature as compared with the present provisions for old-age and survivors’ benefits, and that they lacked objectivity in the determination of such disability, which would create administrative difficulties. The opponents thought that, in many instances, physical disability would not necessarily produce economic disability, although this problem would arise if monthly benefits were available.\(^5\)

A compromise was reached on these matters and Public Law 84-880 provided, in part, for adding two new sections to the Social Security Act, Sections 223\(^6\) and 224\(^7\) relating to disability insurance benefit payments and the reduction of benefits based on disability, respectively. Under Section 223, payment of benefits was provided to persons who became permanently and totally

\(^1\) 42 U.S.C. § 301 (1935).
\(^2\) Id.
\(^3\) 42 U.S.C. § 424 (1956).
\(^5\) Id. at 3879.
\(^7\) 42 U.S.C. § 424 (1956).
disabled and had attained the age of 50 but not the age of 65. However, under Section 224, if any such individual was entitled to disability insurance benefits and a periodic benefit was payable for that month to that individual under a workmen’s compensation law or certain other plans on account of a physical or mental impairment, the social security disability benefit would be reduced by an amount equal to the periodic benefit or benefits for that month. Therefore, the social security disability benefit was offset by an amount equal to a payment under a workmen’s compensation law. This provision eventually became known as the “disability offset provision.”

In 1958, Congress passed legislation which repealed Section 224 of the Social Security Act.\(^8\) Senate Report No. 2388\(^9\) which accompanied H.R. 13549 characterized the disability offset provision as having produced inequitable effects. The Senate Committee on Finance characterized the Social Security Amendments of 1956\(^10\) as a conservative extension in order to reduce to a minimum the problems that were inevitable in a new program (providing monthly benefits for injured workers who were no longer able to work because of total disability). Because of the favorable experience that developed, further protection against the risk of total disability was sought in addition to removing the disability offset provision. Benefits were made available for dependents of disability insurance beneficiaries.\(^11\)

The Senate Committee on Finance suggested that the disability benefit offset provision was included in the law at the time that the provisions for social security disability benefits were enacted to prevent duplication between the new benefits and other disability payments, pending the development of administrative experience. After two years’ experience, the danger of duplication was not found to be of sufficient importance to justify reduction of the social security disability benefits.\(^12\)

The Committee believed that social security disability benefits should be viewed as providing the basic protection against loss of income due to disabling illness and concluded that the purposes of the program were incompatible with a reduction of the benefits because disability benefits are payable under other programs.\(^13\)

The Social Security Amendments of 1960 further liberalized the disability insurance benefits by making three important changes. Under Section 223(a) (B) of the Social Security Act\(^14\) the age limit of 50 was removed and disabled insured workers under age 50 and their dependents could qualify for benefits.

\(^8\) Act of Aug. 28, 1958, Title II, § 206, 72 Stat. 1025.
\(^12\) Id. at 4228.
\(^13\) Id. at 4221.
\(^14\) 42 U.S.C. § 423(a) (1) (B) (1960).
In Senate Report No. 1856\textsuperscript{15} which accompanied H.R. 12580 the Senate Committee on Finance felt that although the age restriction was appropriate as part of the conservative approach when disability insurance benefits were first provided,\textsuperscript{16} with sufficient experience and an actuarial surplus in the disability insurance trust fund, liberalization was in order. The need of younger disabled workers and their families for disability protection was in some respects greater than that of older workers.

Section 222 of the Social Security Act\textsuperscript{17} was substantially revised by strengthening the rehabilitation aspects of the disability program by providing a twelve-month period of trial work, during which benefits are continued for all disabled workers who attempt to return to work. The trial-work period was broadened to include a wide spectrum of work situations in which benefits would be continued. The Senate Committee on Finance believed that the broadening of the trial-work period would be an incentive to greater rehabilitation effort.\textsuperscript{18}

Section 223(a)(1) of the Social Security Act\textsuperscript{19} was also amended. The waiting period for disability insurance benefits was eliminated in certain cases. When disability insurance benefits were first provided,\textsuperscript{20} a disabled worker could not receive disability benefits until after his disability continued through a waiting period of six months. The Senate Committee on Finance felt that where disability recurs relatively soon after the termination of a prior period of disability, the worker should not be required to undergo another waiting period before benefits could be paid. This waiting period would encourage disabled persons to return to work even though their work attempts might be unsuccessful.\textsuperscript{21}

The new amendment, Section 233(a)(1), provided that those who became disabled within five years after termination of a period of disability would not be required to serve another six-month waiting period before they would again be eligible to receive disability insurance benefits. The Committees intended to restrict the group aided to those with a second disability which was reasonably related to the first.\textsuperscript{22}

Changes provided in the Social Security Amendments of 1965 were even more sweeping. However, a disability offset provision reappeared. Section 335 of Public Law 89-97, 79 Stat. 286, enacted Section 224 of the Social Security Act,\textsuperscript{23} which relates to the reduction of benefits in the event of receipt of workmen’s compensation.

\textsuperscript{15} 1960 U.S.C.C.A.N. 3608.
\textsuperscript{17} 42 U.S.C. § 422(c) (1960).
\textsuperscript{20} 42 U.S.C. § 424 (1956).
\textsuperscript{22} Id.
\textsuperscript{23} 42 U.S.C. § 424a (1965).
In Senate Report No. 40424 which accompanied H.R. 6675, the Senate Committee on Finance noted the concern that had been expressed by many witnesses in the hearings about the payment of disability benefits concurrently with benefits payable under state workmen’s compensation programs. The Committee believed that, as a matter of sound principle, preventing the payment of excessive combined benefits was desirable.

Except where a state workmen’s compensation law provided for an offset against social security disability benefits, the new offset provision provides for a reduction in the social security benefits in the event the total benefits paid under the two programs exceed eighty per cent of the worker’s monthly earnings prior to the disability. In no event, however, would the total benefits payable with respect to a worker be reduced below the amount of the unreduced monthly social security benefits.

The Committee believed that the new provision avoided the problems and inequities of the earlier offset provision because the previous reduction formula required reductions that frequently resulted in benefits that replaced no more than thirty per cent or so of the worker’s earnings at disablement. The new provision also overcame, in part, the erosion in the earnings replacement value of disability benefits which occurs over a period of time with increases in wage levels and living costs. The reduction itself would be automatically redetermined through a triennial redetermination of the eighty per cent limitation to allow for increases in the level of earnings despite the eighty per cent limitation. In addition, whenever a general benefit increase would be legislated for all social security beneficiaries, those increases would be passed on to the beneficiary despite the eighty per cent limitation.

Among the other changes in 1965, section 303 of Public Law 89-97, 79 Stat. 286, amended two sections of the Social Security Act. It eliminated the “long-continued and indefinite duration requirement” from the definition of disability under Section 216(i) (1) of the Social Security Act, which substantially revised the term “disability” under Section 223(c)(2) of the Social Security Act.

Before enactment of this change, disability insurance benefits were payable only if the worker’s disability was expected to result in death or be of long-continued and indefinite duration. The change broadened the disability protection afforded by the Social Security program by providing disability insurance benefits for an insured worker who had been totally disabled throughout a continuous period of six calendar months.

26 Id.
27 Id.
The Committee felt that this change could result in the payment of disability benefits in cases of short-term, temporary disability; cases in which most state workmen's compensation laws would be providing temporary total disability benefits. The Committee also felt that many of the cases would be of temporary disability resulting from accidents or illnesses requiring a limited period of immobility. Therefore, the Committee recommended providing payment of disability benefits for an insured worker who had been or could be expected to be totally disabled throughout a continuous period of twelve calendar months.\textsuperscript{30}

Although disability benefits would be provided for a totally disabled worker even though his condition may be expected to improve after a year, experience under the disability program had demonstrated, in the great majority of cases in which total disability continues for at least a year, that the disability is essentially permanent.\textsuperscript{31}

The Social Security Amendments of 1967 again modified the disability benefit offset provision as it related to workmen's compensation benefits. Before the 1967 changes, a worker's average current earnings, used to arrive at the eighty per cent offset level, did not include that part of the earnings in excess of the maximum annual amount that is creditable for Social Security purposes.

The objective of the disability benefit offset provision was to avoid payment of combined amounts of Social Security benefits and workmen's compensation payments that would be excessive in comparison with the beneficiary's earnings before disablement. The Committee believed that those provisions went beyond that objective in cases where a worker's actual previous earnings in employment covered by the act was higher than the maximum amount that is creditable under the Social Security program.\textsuperscript{32} For example, a disabled worker, whose actual earnings during his highest five-year period in work covered by the act are double the amount counted for Social Security purposes, may be restricted to combined benefits of forty per cent, instead of eighty per cent, of his previous pay.\textsuperscript{33}

Section 108 of Public Law 90-248, 81 Stat. 821, relating to the increase of earnings counted for benefit and tax purposes, amended a number of sections which in part provided for workers who earn more than the annual amount that may be counted for Social Security purposes to have those amounts counted for benefits purposes.

Not until \textit{Gambill v. Finch}\textsuperscript{34} was the constitutionality of the disability offset provision questioned. The plaintiff alleged that the reduction of disability benefits for a person who is expected to return to work in the future would be unconstitutional.
benefits under the Social Security Act by receipt of workmen's compensation benefits was arbitrary and denied due process of law. The plaintiff had incurred an injury in 1963 which entitled him to workmen's compensation under Michigan law and to disability benefits under the Social Security law.\(^5\) The plaintiff negotiated a lump-sum workmen's compensation settlement in 1965 when no statute required a reduction of disability benefits because of workmen's compensation. The first disability offset provision had already been repealed.\(^6\)

The plaintiff applied and was awarded Social Security disability insurance benefits; but before any payment was made, the award was reduced by application of the statutory formula.\(^7\) The reduction was applied for the number of weeks covered in the workmen's compensation settlement.

The question the case raised was whether any vested interest in Social Security disability benefits accrues to the wage-earner who supported the legislation by tax payments.\(^8\) The Supreme Court had indicated that legislation of a similar nature did not deprive one of any property right.\(^9\) It had already stated in *Flemming v. Nestor*\(^10\) that "of special importance in this case is the fact that eligibility for benefits, and the amount of benefits do not in any true sense depend on contribution to the program through the payment of taxes, but rather on the earnings record of the primary beneficiary."\(^11\) The Court noted the "highly complex and interrelated statutory structure" and stated: "to engraft upon the social security system a concept of 'accrued property rights' would deprive it of the flexibility and boldness in adjustment to ever-changing conditions which it demands."\(^12\)

Justice Taylor concluded in *Gambill* that:

> While the Due Process Clause would protect plaintiff from an arbitrary exercise of congressional power, the Court is unable to conclude that the statute is arbitrary. In this complex area fears that duplication of benefits under the two programs would have hindered the development of workmen's compensation programs would be adequate reason for the change.\(^13\)

A few months later, another constitutional attack was leveled against Section 224 of the Social Security Act\(^4\) in the case of *Bartley v. Finch*.\(^5\) The claimant alleged that Section 224 of the Social Security Act\(^4\) was in con-

\(^{38}\) 309 F. Supp. at 2.
\(^{40}\) *Id.*
\(^{41}\) *Id.* at 611.
\(^{42}\) *Id.*
\(^{43}\) 309 F. Supp. at 2.
fect with the Fifth Amendment of the Constitution of the United States in providing for a reduction in disability benefits when the beneficiary also receives workmen's compensation benefits, and in not providing for a similar reduction for other persons receiving Social Security disability benefits who also receive private insurance benefits or other benefits. The court noted that:

In enacting the Social Security Act, Congress was under no obligation to exhaust all possible sources of income which beneficiaries of the federal Social Security legislation might receive in addition to their benefits whether from a private health and accident insurance policy or from any other arrangement... social security benefits are paid to replace lost earnings and not in the nature of compensation which with other compensations have been found to result in a beneficiary receiving for disability more than he was earning before he became disabled.47

The court held that, "Section 224, 42 U.S.C. Section 424a, does not contravene the Due Process Clause of the Fifth Amendment to the Constitution. This amendment does not contain an 'equal protection clause.'"48

In early 1971, the case of *Lofty v. Richardson*49 was decided. The plaintiff had been granted total and permanent disability benefits under the Social Security Act starting in 1966. In June 1966 he accepted a lump-sum settlement in full payment of his workmen's compensation claim arising out of the same injuries which produced his total and permanent disability for Social Security benefits.

Taking into account the workmen's compensation settlement, the Secretary of Health, Education and Welfare reduced the plaintiff-appellant's Social Security disability benefits from $269.80 a month to $25.80 a month for forty-four months, or until the workmen's compensation settlement had been exhausted at the then-current state workmen's compensation law rate for the State of Michigan of $57 per week.

The action of reduction was taken under 42 U.S.C. 424a, as amended, which placed a limit of eighty per cent of the claimant's previous average monthly earnings upon the total of Social Security and workmen's compensation benefits he was to receive. The plaintiff claimed that this section of the Social Security Act violated the Due Process Clause of the United States Constitution in that when Congress made workmen's compensation the only subject for its deductions, it created a patently arbitrary classification.50

The court first proceeded to review the rules pertaining to legislative power. The court emphasized the distinction between congressional power and wisdom by quoting at length from *Flemming v. Nestor*:51

47 311 F. Supp. at 879.
48 Id. at 880.
49 440 F. 2d 1144 (6th Cir. 1971).
50 Id. at 1145.
51 363 U.S. 603 (1960).
Particularly when we deal with a withholding of a noncontractual benefit under a social welfare program such as this, we must recognize that the due process clause can be thought to interpose a bar only if the statute manifests a patently arbitrary classification, utterly lacking in rational justification. 52

The court then illustrated the breadth of legislative power accorded to Congress, or the states, by the Supreme Court's interpretation of the constitutional limitations contained in the due process and equal protection clauses. It was indicated that some basic guidelines had already been firmly fixed:

The distinctions drawn by a challenged statute must bear some rational relationship to a legitimate state end and will be set aside as violative of the equal protection clause only if based on reasons totally unrelated to the pursuit of that goal. Legislatures are presumed to have acted constitutionally . . . their statutory classifications will be set aside only if no grounds can be conceived to justify them. 53

A statutory discrimination will not be set aside if any facts reasonably may be conceived to justify it.

The court also quoted from Lindsley v. Natural Carbonic Gas Company, 54 which dealt with a somewhat similar classification argument:

In the area of economics and social welfare, a state does not violate the equal protection clause merely because the classifications made by its laws are imperfect. If the classification has some 'reasonable basis,' it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality.' 55

The court then reviewed, at length, the legislative history of the Social Security Act and determined that it could not say that "the classification herein attacked was utterly lacking in rational justification." 56 First, the court felt that such determination "would represent a very narrow construction of the congressional power to enact, amend and modify social legislation as required by the circumstances reported to Congress concerning its operation." 57 Second, enforcement of the workmen's compensation deductions would be relatively simple, whereas separating the wage benefits from civil damage judgments or determining who had received private insurance benefits, might present administrative problems of a serious nature. 58 Finally,

both Social Security and workmen's compensation programs are social welfare legislation and more arguably duplicative of one another

52 440 F.2d at 1145.
53 Id. at 1146.
54 220 U.S. 61 (1911).
55 440 F.2d at 1147.
56 Id. at 1146.
57 Id. at 1151.
58 Id.
NOTES AND COMMENTS

than could appropriately be claimed concerning Social Security benefits and the other two types of payments; private accident or disability insurance which is frequently paid for entirely by the recipient.\(^5\)

In November 1971, the Supreme Court rendered its decision concerning the constitutionality of Section 224 of the Social Security Act,\(^6\) in the case of *Richardson v. Belcher*.\(^7\) Justice Stewart delivered the majority opinion of the Court in the 4 to 3 decision upholding the constitutionality of the statutory provision. Chief Justice Burger and Justices White and Blackmun joined, while Justice Douglas filed a dissenting opinion as did Justice Marshall, who was joined by Justice Brennan.

Factually, the beneficiary was granted Social Security disability benefits effective in October 1968 which were subsequently reduced upon a finding that he was receiving workmen's compensation benefits from the State of West Virginia.

Upon exhaustion of the beneficiary's administrative remedies, an action was brought challenging the reduction of payments on the grounds that the statutory provision deprived him of the due process of law guaranteed by the fifth amendment. The district court held the statute unconstitutional,\(^8\) and the Secretary of Health, Education and Welfare appealed directly to the Supreme Court which held that:

The fact that Social Security benefits are financed in part by taxes on an employee's wages does not in itself limit the power of Congress to fix the levels of benefits under the Act or the conditions upon which they may be paid. Nor does an expectation interest in public benefits confer a contractual right to receive the expected amounts.\(^9\)

The plaintiff relied, in part, upon an analogy drawn in *Goldberg v. Kelley*,\(^10\) between social welfare and property. The Court felt that the analogy could not be "stretched to impose a constitutional limitation on the power of Congress to make substantive changes in the law of entitlement to public benefits."\(^11\) The Court cautioned, however, that to characterize an act of Congress as conferring a public benefit does not, of course, immunize it from scrutiny under the fifth amendment. In answer to plaintiff's argument that the statutory provision discriminates between those disabled employees who receive workmen's compensation and those who receive compensation from private insurance or tort claim awards, the Court stated that, "a statutory classification in the area of social welfare is consistent with the equal protection clause of the Fourteenth

\(^{59}\) Id. at 1151-52.
\(^{60}\) 42 U.S.C. § 424a (1965).
\(^{63}\) Richardson v. Belcher, 401 U.S. at 939.
\(^{64}\) 397 U.S. 254 (1970).
\(^{65}\) 401 U.S. at 940.
Amendment if it is rationally based and free from invidious discrimination. 66
This test was laid down in Dandridge v. Williams. 67

The Court noted that to find a rational basis for the classification created by Section 224 of the Social Security Act 68 it needed to go no further than the reasoning of Congress as reflected in the legislative history.

Congress could rationally conclude that this need [disability benefits] should continue to be met primarily by the states, and that a federal program which began to duplicate the efforts of the states might lead to the gradual weakening or atrophy of the state programs . . . if the goals sought are legitimate, and the classification adopted is rationally related to the achievement of those goals, then the action of Congress is not so arbitrary as to violate the due process clause of the Fifth Amendment. 69

Almost as important as what the Court did say was what it did not say. It apparently, for the time being, adopted the thrust of the arguments of the proponents of the disability offset provision.

The initial function and objective of the Social Security law was not aimed at replacing wages lost as a result of temporary disability. However, the replacement of wages on a temporary basis has been one of the major goals of the state workmen’s compensation system. In addition to providing benefits for those temporarily disabled, the function of the state system is to provide, through cost incentives, well-managed safety programs and intensive medical and vocational rehabilitation for those who sustain occupational injuries or diseases.

Accident prevention is based on the rating principle that the costs of industrial injuries should be borne by the employer. The lower the accident rate, the lower the workmen’s compensation premium. The same is true regarding rehabilitation, which is the control of disability through maximum restoration of a disabled person.

The effects of overlapping systems would destroy the incentive behind accident prevention. If workmen’s compensation costs were absorbed into the Social Security program, employers without safety programs and those whose employment is hazardous would pay no more than those employers who have adopted safety programs or who have less hazardous employment. 70 Also, little incentive would exist for a disabled person to accept the risk, pain, and struggle involved in attempting to become self-supporting again through the process of vocational rehabilitation.

66 Id. at 941.
69 401 U.S. at 942.
70 Hearings on H.R. 6675 Before the Senate Committee on Finance, 89th Congress, 1st Sess., p. 259 (1965).
The concept behind the *Richardson* decision is likely to be reexamined again shortly. Only a matter of time remains before Congress enacts some type of national health insurance program. Medical care is presently being provided for a large segment of the population. Congress' solution to the problem that, in most states, the workmen's compensation laws do provide for unlimited medical benefits for those sustaining occupational injuries and diseases will be interesting. Will another offset provision be enacted? If so, will its constitutionality be sustained?

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