



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: B-259559
File: Master Chief Petty Officer James G. Patton, Jr.—Claim for Recalculation of Retired Pay
Date: June 6, 1995

DIGEST

When a Navy enlisted member is eligible for retired pay by reason of disability, his pay may be computed on the retainer pay formula in 10 U.S.C. § 6333 to include a 10 percent increase for extraordinary heroism under 10 U.S.C. § 6330(c) if he was qualified for transfer to the Fleet Reserve prior to his retirement for disability.

DECISION

We have been asked to settle the claim of Master Chief Petty Officer James G. Patton, Jr. (Retired), for recalculation of his retired pay to include a 10 percent increase for extraordinary heroism. We allow the claim.

Master Chief Patton retired from the Navy in March 1993 with over 23 years of service and was placed on the Temporary Disability Retired List. While on active duty he was credited with an act of extraordinary heroism which would qualify him for a 10 percent increase in retainer pay. However, when he retired, he was denied the increase due to his disability retirement. The Navy's denial of the increase was based on prior Comptroller General decisions, particularly 43 Comp. Gen. 805 (1964). The Navy submission on this matter points out that in a later decision, Department of Defense Military Pay and Allowance Committee Action No. 532, 56 Comp. Gen. 740 (1977), we discussed the effect of 10 U.S.C. § 1401a(f), commonly called the Tower Amendment, on certain members receiving retainer pay. However, the submission notes that the language of the Tower Amendment has changed and questions the effect of the change.

Under 10 U.S.C. § 6330 a Navy member with 20 or more years of active service may be transferred to the Fleet Reserve. In the Fleet Reserve he is entitled to retainer pay of 2-1/2 percent of basic pay times the number of years he served on active duty. If qualified, he may receive an increase of 10 percent for certified acts of extraordinary heroism; however, the total retainer pay received may not exceed 75 percent of his basic pay. When the member has completed 30 years of service or is found not physically qualified, § 6331 provides that he be transferred to the retired list at the same rate of

retired pay as he received in retainer pay in the Fleet Reserve, unless he is otherwise entitled to higher pay.

For members entitled to disability and certain other types of retirement, 10 U.S.C. § 1401 provides several calculation formulas. A member is entitled to have his pay computed under the most favorable formula in § 1401 or under another applicable statute if that would be beneficial to him.

Adjustment of retired and retainer pay to reflect changes in the Consumer Price Index is governed by 10 U.S.C. § 1401a. In 1975 Congress enacted § 1401a(f), the Tower Amendment, to prevent a member who remains on active duty after the date when he is eligible to retire from receiving less retired pay than a member who retires earlier.

In 43 Comp. Gen. 805, supra, we dealt with a Navy member who was transferred to the Fleet Reserve in August 1953 with over 19 years of service and with a record of extraordinary heroism.¹ He was retained on active duty until January 1954 and then with over 20 years of service was placed on the temporary disability retired list and subsequently the permanent disability retired list. While on the temporary and permanent disability retired lists, he elected to receive pay calculated at 2-1/2 percent of basic pay times the number of years he served, as prescribed in the applicable statutes. While the law in effect at the time allowed the member to select the retired pay calculation method most favorable to him, the term retired pay as used in those statutes did not encompass retainer pay and therefore the member in that case was precluded from using the retainer pay calculation as the most favorable formula.

However in 56 Comp. Gen. 740, supra, we concluded that subsequent legislation, in effect, changed the result in the earlier decision. We discussed the effect of 10 U.S.C. § 1401a(f) on the disability retired pay of Navy members eligible for transfer to the Fleet Reserve. We said that a member who was qualified for transfer to the Fleet Reserve prior to the time of his disability retirement could receive retainer pay calculated according to 10 U.S.C. § 6330. Additionally, we noted that in enacting the Tower Amendment Congress did not make a distinction between retired and retainer pay since both terms were used in the law, and to distinguish between the terms would defeat the purpose of the legislation.

As pointed out in the submission, 10 U.S.C. § 1401a has been amended by striking out the words "or retainer" wherever they occurred. However 10 U.S.C. § 1401a(g)(4), provides that "retired pay" includes "retainer pay," so it is clear the terms are interchangeable.

¹Certain members formerly could be transferred to the Fleet Reserve with 16 years of service under the Naval Reserve Act of 1938, Act of June 25, 1938, ch. 690, Title II, 52 Stat. 1175, 1178.

Master Chief Patton's situation is similar to that presented in 56 Comp. Gen. 740, supra. Since he had performed over 20 years of service before his disability retirement, by virtue of 10 U.S.C. § 1401a(f) he is entitled to retainer pay authorized by 10 U.S.C. § 6330 and calculated under 10 U.S.C. § 6333 including the 10 percent increase for heroism that he was entitled to prior to his disability retirement if that is the method of calculation most favorable to him. Such calculation would be effective from a date prior to his retirement.

The submission from the Bureau of Naval Personnel is answered accordingly.

/s/ Seymour Efros
for Robert P. Murphy
General Counsel