

General Graves was retired as an officer of the Regular Army on August 1, 1981. He has since been employed in a civilian capacity by the Defense Security Assistance Agency as a consultant, with salary accruing on a daily basis for those days when he is called upon to serve.

The disbursing officer notes that because General Graves is a retired Regular officer, the provisions of 5 U.S.C. § 5532 required a reduction of his retired pay based on his intermittent employment in 2 separate computational steps, following the expiration of the initial 30-day exemption period prescribed by 5 U.S.C. § 5532(d)(2). The first step involves a reduction of his military retired pay on a daily basis for each day of his intermittent civilian employment under the formula prescribed by 5 U.S.C. §§ 5532(a) and (b), which applies only to retired Regular officers of the uniformed services. The second step involves a further reduction under the general requirement imposed by 5 U.S.C. § 5532(c) that combined military retired pay plus Federal civilian salary not exceed the rate of basic pay for Level V of the Executive Schedule for any "pay period."

The disbursing officer indicates that doubt has arisen concerning the proper application of the term "pay period" as used in 5 U.S.C. § 5532(c) in the computation of General Graves' net military retired pay entitlements. Uncertainty exists because his civilian salary accrues only on the days he is actually employed, and the first-step computation under the formula of 5 U.S.C. §§ 5532(a) and (b) involves a reduction of his retired pay on a daily basis; but he is paid civilian salary on a biweekly basis and military retired pay on a monthly basis. The disbursing officer notes that the net amount of his retired pay entitlements may vary somewhat depending upon whether a daily, biweekly, or monthly "pay period" is used in the computation of the retired pay reduction under 5 U.S.C. § 5532(c), and

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sample computations are presented to illustrate this. The disbursing officer therefore asks whether the "pay period" to be used for the reduction referred to in 5 U.S.C. § 5532(c) for intermittent employees is each day worked, the normal biweekly pay period for civilian employees, or the normal monthly pay cycle for retired military personnel. The correctness of the applicable sample computation presented is also questioned.

The provisions of 5 U.S.C. §§ 5532(a) and (b), prescribing a formula for the reduction of the military retired pay of retired Regular officers employed in a civilian capacity with the Government are derived from section 201 of the Dual Compensation Act, Public Law 88-448, approved August 19, 1964, 78 Stat. 484. Those provisions expressly require a daily reduction of the military retired pay of a retired Regular officer holding intermittent Federal civilian employment only on "the days for which he actually" earns civilian salary. Thus, 5 U.S.C. §§ 5532(a) and (b) require a reduction on a daily basis of the retired pay of an officer intermittently employed, in the amount computed under the prescribed formula or the amount of daily civilian salary, whichever is less. See 47 Comp. Gen. 185 (1967); and 50 Comp. Gen. 604, 606 (1971).

The provisions of 5 U.S.C. § 5532(c), on the other hand, are derived from subsection 308(a) of the Civil Service Reform Act of 1978, Public Law 95-454, approved October 13, 1978, 92 Stat. 1149. Those provisions were designed to change the pay limitation so that retired military personnel, either Regular or Reserve, who were appointed to civilian positions in the Federal service would be subject to an absolute maximum rate of combined civilian salary and military retired pay equal to the rate payable for Level V of the Executive Schedule. See H.R. Rep. No. 95-1403, 95th Cong., 2d Sess. 25 (1978). Under 5 U.S.C. § 5532(c) a reduction of military retired pay is required for each "pay period" in which the amount of

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a retired service member's combined civilian salary and military retired pay exceeds that maximum rate, and the statutory language makes no distinction between a retired member holding full-time civilian employment and one employed intermittently. See, generally, Matter of McFarlane, B-204119, January 27, 1982, 61 Comp. Gen. ____.

Although the provisions of statutory law governing the payment of military active duty and retired pay contained in titles 10 and 37 of the United States Code generally call for entitlements to be computed on a monthly basis, the term "monthly pay period" is not used. See, e.g., 10 U.S.C. §§ 1401, 3991; 37 U.S.C. § 1004. Further, the provisions of title 5 of the United States Code relating to the pay of civilian employees contain no reference to a "daily pay period" for persons employed intermittently as consultants on a per diem basis.

However, a "biweekly pay period" is established under title 5 of the United States Code for employees of executive agencies, regardless of whether their employment is full time or intermittent. See 5 U.S.C. § 5504. And we have consequently held that a person employed intermittently by an agency as a consultant, as well as a full-time employee, may not receive compensation within any "biweekly pay period" in excess of the biweekly rate of the basic pay of Level 5 of the Executive Schedule, under the pay limitation imposed by 5 U.S.C. § 5308. See Matter of Hass, 58 Comp. Gen. 90 (1978).

Our view is that the provisions of 5 U.S.C. § 5532(c) here in question were designed for application in a manner consistent with the other provisions of title 5 of the United States Code, described above, which relate to the pay limitations and "pay periods" of civilian employees. We therefore conclude that the term "pay period" used in 5 U.S.C. § 5532(c), as it applies to a retired service member employed in a civilian capacity by an

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executive agency, means the biweekly pay period fixed under 5 U.S.C. § 5504 for all of the agency's employees. We conclude further that any retired member so employed, whether on a full-time or an intermittent basis, is subject to a reduction of military retired pay under 5 U.S.C. § 5532(c) each biweekly agency pay period in which the amount of his combined military retired pay and civilian salary is in excess of the biweekly rate of basic pay prescribed for Level V of the Executive Schedule.

In the case of General Graves, therefore, a reduction of military retired pay on a daily basis is required under the formula prescribed by 5 U.S.C. §§ 5532(a) and (b) for each day he earns salary as a consultant through intermittent employment with the Defense Security Assistance Agency, since he is a retired officer of the Regular Army. His military retired pay may then be subject to a further reduction under 5 U.S.C. § 5532(c) if the amount of his remaining retired pay when combined with his civilian salary for any biweekly agency pay period exceeds the rate of basic pay prescribed for Level V of the Executive Schedule. The computation under 5 U.S.C. § 5532(c) presented by the disbursing officer covering a sample biweekly pay period appears to be correct, i.e., the amount of the reduction is determined by (1) combining the biweekly civilian salary with biweekly military retired pay (as reduced under 5 U.S.C. §§ 5532(a) and (b)), and (2) subtracting from that sum the biweekly rate of Level V Executive Schedule basic pay.

The question presented is answered accordingly.

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of the United States