

*70111111*



**The Comptroller General  
of the United States**

Washington, D.C. 20548

**Decision**

**Matter of:** B-225150  
**File:** Retired Pay Calculation after Retirement Following  
a Reduction in Grade  
**Date:** May 4, 1987

**DIGEST**

Under 10 U.S.C. § 1401a(f), a member of an armed force who retires after January 1, 1971, may have his retired pay calculated on the basis of the pay rates in effect and applicable to him at any point in time after he became eligible to retire. A member receives the benefit of this law even if he is reduced in grade, following his eligibility to retire, for disciplinary reasons including a reduction in grade pursuant to a court-martial sentence. See 56 Comp. Gen. 740 (1977).

**DECISION**

This decision concerns whether the retired pay of an Air Force member who was reduced in grade pursuant to a court-martial sentence should be computed based on the pay rate of his grade prior to reduction or based on the lower pay rate of the grade to which he was reduced.<sup>1/</sup> As will be explained below, the provisions of 10 U.S.C. § 1401a(f) are applicable under the circumstances described so that the member's retired pay should be computed based on the higher grade he held prior to reduction under the court-martial sentence.

**BACKGROUND**

By February 1985, the member concerned had served on active military duty in excess of 20 years and had held the grade of technical sergeant (E-6) for slightly more than the last

<sup>1/</sup> The question was presented by the Chief, Accounting and Finance Division, Directorate of Resource Management, Headquarters Air Force Accounting and Finance Center. The matter was approved for submission to us by the Department of Defense Military Pay and Allowance Committee which assigned it number DO-AF-1468.

038800 - 132881

5 years of service. For reason unspecified, the member was court-martialed, and on February 19, 1985, pursuant to a court-martial sentence he was reduced in grade to airman (E-1) and placed in confinement. Subsequently, on November 30, 1985, he was released from confinement and permitted to retire voluntarily as of December 1, 1985, in the grade of airman (E-1).

The Air Force Accounting Officer notes that generally a member of an armed force is retired in the grade he holds on the last day of his active service,<sup>2/</sup> and his retired pay is based on the pay of that grade.<sup>3/</sup> He also notes that the provisions of 10 U.S.C. § 1401a(f) are often applicable, so that if it is advantageous to the member, his retired pay may be based on the pay grade and years of service he had at an earlier time with subsequent cost-of-living adjustments. The Accounting Officer correctly recognizes that if the provisions of 10 U.S.C. § 1401a(f) are applied here, the member's retired pay would be based on his rank of technical sergeant (E-6). The Accounting Officer indicates that he is aware of our decision at 56 Comp. Gen. 740 (1977), where we held that section 1401a(f) applies notwithstanding that a member retired at a lower grade due to unsatisfactory performance or disciplinary action. He, however, questions whether this includes the situation where a member's grade is reduced pursuant to a court-martial sentence. --

#### ANALYSIS

Section 1401a of title 10, United States Code, in general directs that military retired pay be adjusted to reflect changes in the Consumer Price Index rather than changes in active duty basic pay rates. Subsection 1401a(f), added as

---

<sup>2/</sup> See 10 U.S.C. § 8961(b), applicable to Air Force enlisted members.

<sup>3/</sup> See 10 U.S.C. §§ 8914 and 8991, Formula B, applicable to Air Force enlisted members with over 20 but less than 30 years of service who are voluntarily retired.

an amendment to 10 U.S.C. § 1401a in 1975,<sup>4/</sup> currently reads in pertinent part as follows:

"(f) Notwithstanding any other provision of law, the monthly retired or retainer pay of a member or a former member of an armed force who initially became entitled to that pay on or after January 1, 1971, may not be less than the the monthly retired or retainer pay to which he would be entitled if he had become entitled to retired or retainer pay at an earlier date, adjusted to reflect any applicable increases in such pay under this section. In computing the amount of retired or retainer pay to which such a member would have been entitled on that earlier date, the computation shall be based on his grade, length of service, and the rate of basic pay applicable to him at that time. \* \* \*"

Subsection 1401a(f) was adopted in order to alleviate the so-called "retired pay inversion" problem, which was created by the fact that for several years upward cost-of-living adjustments of retired and retainer pay under 10 U.S.C. § 1401a had occurred in greater amounts and at greater frequency than increases in active duty military basic pay. The result of this was that many of those who remained on active duty after becoming eligible for retirement were losing considerable amounts in retirement pay. The amendment adding subsection 1401a(f) was intended to provide an alternate method of calculating retired pay or retainer pay. The computation of a member's retired pay under the alternate method provided by 10 U.S.C. § 1401a(f) is necessarily somewhat complex; it essentially involves calculating the maximum amount of retired pay based not on the member's actual retirement but rather on his earlier eligibility for retirement. See generally 59 Comp. Gen. 691 (1980); Brigadier General Richard G. Moore, B-204201, March 25, 1982. Thus, a member voluntarily retired on the basis of his longevity of service is generally entitled under 10 U.S.C. § 1401a(f) to the maximum amount of retired pay to which he would have been entitled if he had entered retirement voluntarily and upon

---

<sup>4/</sup> Subsection 1401a(f) (popularly known as the "Tower Amendment," after its sponsor) was added by § 806 of the Department of Defense Authorization Act, 1976, Pub. Law 94-106, October 7, 1975, 89 Stat. 538-539; and was subsequently amended by Pub. Law 98-94, § 921(b), September 24, 1983, 97 Stat. 640; and Pub. Law 98-525, § 1405(26), October 19, 1984, 98 Stat. 2623.

his request at some time prior to his actual retirement date. See Lieutenant General William B. Fulton, B-189029, November 2, 1977. As provided by the statute, the computation of such retired pay is to be based on the member's "grade, length of service, and the rate of basic pay applicable to him" at the earlier time. See Major General Edwin A. Walker, 62 Comp. Gen. 406 (1985).

As recognized by the Air Force in its submission, we have held that even if a member was reduced in grade because of unsatisfactory performance or as a result of disciplinary action, upon retirement, he would be entitled to have his retired pay calculated under the alternate method provided in 10 U.S.C. § 1401a(f). This resulted in the member being entitled to having his retired pay calculated on the basis of his grade before it was reduced. 56 Comp. Gen. 740, 743 (1977).

In reaching our decision in 56 Comp. Gen. 740, we relied on one of the cardinal principles of statutory construction, namely, that the words and phrases in a statute should be given their ordinary and usual meaning unless a different purpose is clearly manifested in the statute or legislative history. We then went on to state that:

"Section 1401a(f) of title 10, United States Code, clearly states that the retired or retainer pay of a member who initially became entitled to that pay on or after January 1, 1971, may not be less than the monthly retired or retainer pay to which he would be entitled if he had become entitled to retired or retainer pay at an earlier date. It also specifically provides that in computing the amount of retired or retainer pay to which he would have been entitled on that earlier date, the computation shall, among other things, be based on his 'grade' applicable to him at that time. No exception to this rule is expressed in the language of the statute and none can be found in the legislative history." 56 Comp. Gen. at 742-743.

We consider the present case governed by the ruling in 56 Comp. Gen. 740, since as we have noted, no exception is made in the language of section 1401a(f) or in its legislative history which could be considered a basis to hold that a member whose reduction in grade was due to disciplinary action would not be entitled to have section 1401a(f) applied in calculating his retired pay. We have found no basis to distinguish a reduction in grade pursuant to a court-martial sentence from other forms of disciplinary action for this purpose. While the services may find it desirable to seek

legislative change in this regard, under the law as it now stands we have no alternative but to hold that section 1401a(f) is applicable here.

Accordingly, the member concerned here, although now on the retired list in the grade of E-1, is entitled to have his retired pay computed based on the grade of E-6, which he held at a time when he was eligible to retire but prior to his reduction in grade. We, therefore, are returning the enclosed voucher for payment, if otherwise correct.

A handwritten signature in cursive script, reading "Milton J. Jordan".

Acting Comptroller General  
of the United States