



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Admiral Jonathan T. Howe, USN (Retired)
File: B-255792
Date: May 9, 1994

DIGEST

Where Board for the Correction of Naval Records changed officer's military records to show that he retired on June 1, 1992, in the rank of Admiral (O-10) rather than on July 1, 1992, at which time he had reverted to permanent rank of Rear Admiral (O-8) because of delay in confirmation of retirement at rank of Admiral, officer may have excess leave liquidated in accordance with his corrected record.

DECISION

The Defense Finance and Accounting Service (DFAS) has asked that we determine whether Admiral Jonathan T. Howe, USN (Retired), should have had his excess leave, upon retirement and subsequent to action by the Board for the Correction of Naval Records, liquidated at the grade of Rear Admiral (O-8) or Admiral (O-10). We find that liquidation at the higher grade is proper.

Admiral Howe was serving in a position under 10 U.S.C. § 601 for which he was entitled to the grade of O-10, Admiral. However, Admiral Howe was to revert to his permanent grade of O-8, Rear Admiral, prior to his projected retirement sometime before June 4, 1992. As a result, legislation was enacted to continue him in the grade of Admiral through June 4, 1992. See Pub. L. No. 102-297, June 2, 1992, 106 Stat. 216. Admiral Howe, however, was not transferred to the retired list until July 1, 1992, by which time the extension of his O-10 grade had expired, so that the 60 days of excess leave he had accumulated were liquidated at the O-8 rate to which he had reverted a week earlier.

Section 1370 of title 10, United States Code, provides that an officer may be retired in the grade in which he was serving under 10 U.S.C. § 601, in the discretion of the President with the advice and consent of the Senate. Although the President had nominated Admiral Howe in late 1991 for retirement at grade O-10, due to a delay in forwarding the request for confirmation, and delay in the Senate, his retirement at that grade was not confirmed by the Senate until July 2, 1992.

On June 9, 1993, the Board for the Correction of Naval Records corrected Admiral Howe's military records to show that he was transferred to the retired list on June 1, 1992, and was retained on active duty until June 30, 1992. The Board found that there never was an intent to delay the confirmation of his retirement in grade O-10 pursuant to the President's nomination.

DFAS has requested our advice in view of 37 U.S.C. § 501 (b)(1), which provides that a member who has accrued leave to his credit at the time of his discharge is entitled to be paid for such leave on the basis of the basic pay to which he was entitled on the date of discharge. DFAS points out that when Admiral Howe actually retired on July 1, 1992, he was an O-8, not an O-10.

Section 1552 of title 10, United States Code, authorizes the correction of a military record, such as was done in Admiral Howe's case, when considered necessary by the Secretary concerned to correct an error or remove an injustice. Such record corrections are "final and conclusive on all officers of the United States," except when procured through fraud. 10 U.S.C. § 1552(a)(4).

In our view, the Correction Board's action requires that Admiral Howe's leave be liquidated at the O-10 rate. The statutory requirements that he be retired in the grade of Admiral in the discretion of the President with the advice and consent of the Senate were met. Admiral Howe's records simply were changed to reflect an earlier date of retirement and continuation on active duty, to rectify the problem caused by the delay in completing the process of nomination, advice, and consent. In this respect, we note that the statute provides that the Secretary of the department concerned correct the records; we assume that the Correction Board action has been approved by the Secretary of the Navy or his designee. In such case, Admiral Howe should be paid his entitlement on the basis of his corrected records.


Robert P. Murphy
Acting General Counsel