

COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

10/28/64  
IHC

B-154836

OCT 28 1964

Colonel J. L. Clancy, FC  
Finance and Accounting Officer  
Through Office, Chief of Finance  
Department of the Army

Dear Colonel Clancy:

Reference is made to your letter of May 12, 1964, and enclosures, forwarded here on July 27, 1964, under Department of Defense Military Pay and Allowance Committee No. DO-A-784, requesting decision whether in the circumstances set forth below the retired pay of Colonel Roy H. Carr, MSB, retired, deceased, may be computed on the basis of the rates of active duty basic pay prescribed in the Uniformed Services Pay Act of 1963, Pub. L. 88-132, 77 Stat. 210-218, for the period December 1, 1963, to February 22, 1964, date of his death.

The record discloses that while serving in an enlisted status in the Regular Army, Colonel Carr was placed on the temporary disability retired list effective July 26, 1960 (by reason of a 50 per centum disability), in the grade of colonel under authority of 10 U.S.C. 1202 and 1372. It is stated that he had then completed 30 years, 5 months and 28 days of active service and that he had 36 years, 6 months and 7 days of service creditable for basic pay purposes computed under 37 U.S.C. 233(a) (1958 ed.).

Upon being placed on the temporary disability retired list the officer became entitled under 10 U.S.C. 1202 to receive retired pay computed as prescribed in Formula 2, 10 U.S.C. 1401. However, as expressly provided in the latter section, he was entitled to be paid retired pay under "any other provision of law" that was "most favorable to him." It appears that in this case the most favorable provision of law was Formula B, 10 U.S.C. 3991 (presumably based upon having met the requirements prescribed in 10 U.S.C. 3991 prior to July 26, 1960). Under those provisions he was paid retired pay effective from July 26, 1960, at the rate of \$738.75 per month representing 75 percent (the multiplier factor in Formula B, 10 U.S.C. 3991, determined in accordance

37 USC 233(a) (1958 ed.)

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17. 11/21/22  
P.C. 1402 note  
(supp. I)

with the method prescribed in 10 U.S.C. 1405) of \$985, the monthly active duty basic pay of a colonel with over 30 years of creditable service. Effective October 1, 1963, such retired pay was increased by 5 percent (section 5(e), Uniformed Services Pay Act of 1963, Pub. L. 88-132, 77 Stat. 213) to \$775.69 per month and his retired pay was computed at the latter rate through February 22, 1964, date of his death.

It is stated that in November 1963 it was determined that Colonel Carr had recovered from the disability for which he had been placed on the temporary disability retired list. It was also determined that while on the temporary disability retired list he had incurred a disability which rendered him unfit for military service. The record shows that he was removed from the temporary disability retired list effective November 30, 1963, and, having met the basic statutory requirements, he was placed, upon his application, on the Army of the United States retired list effective December 1, 1963, in the grade of colonel, United States Army Reserve, under authority of 10 U.S.C. 3911.

An officer who is retired pursuant to the provisions of 10 U.S.C. 3911 is entitled to retired pay computed as prescribed in Formula B, 10 U.S.C. 3991. Since that was the same formula under which Colonel Carr's retired pay was already being computed while he was on the temporary disability retired list by virtue of the most favorable provision of law contained in 10 U.S.C. 1401, the rate of his retired pay was continued at \$775.69 per month to the date of his death.

On the facts above related, the question submitted in your letter with respect to Colonel Carr is whether his retired pay, effective from December 1, 1963, may be computed on the basis of the active duty rates of pay prescribed in the Uniformed Services Pay Act of 1963. Condensed in brief form the several arguments presented in your letter, with respect to Colonel Carr's retired pay status, are to the effect that the placement of his name on the Army of the United States retired list effective December 1, 1963, in accordance with the provisions of 10 U.S.C. 3911 (immediately following the termination of his temporary disability retired status, effective November 30, 1963) constituted a "new" retirement status entirely separate and distinct from and without any dependency upon or relationship to his former retired status on the temporary disability retired list. The view is expressed that his retired pay commencing December 1, 1963, is for computation under Formula B, 10 U.S.C. 3991, on the rates of active duty basic pay which were in effect on December 1, 1963.

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We agree with the view expressed in your letter that if an individual's retired status on the temporary disability retired list is terminated either pursuant to the provisions of 10 U.S.C. (1210(f)), or other provision of law, and the individual thereupon is not transferred to the permanent disability retired list a retired status which that same individual subsequently may acquire by reason of eligibility therefor under some provision of law constitutes a "new" retirement status and that in such a case the proper basis for the computation of such an individual's "new" retirement pay is for determination solely under the applicable provisions of law which are in force and effect on the "new" retirement date.

In Colonel Carr's case the record shows that his retired status on the temporary disability retired list terminated on November 30, 1963, and that, being eligible therefor, he was placed, upon his own application, on the Army of the United States retired list effective December 1, 1963, in the grade of colonel, United States Army Reserve, under authority of 10 U.S.C. 3921, with entitlement to retired pay computed under Formula B, 10 U.S.C. 3991. Thus, the action taken in his case resulted in a "new" retirement status effective December 1, 1963, and he was thereafter entitled to compute his "new" retired pay on the basis of the rates of active duty basic pay in effect on December 1, 1963, that is, on the basis of the rates of active duty basic pay prescribed in the Uniformed Services Pay Act of 1963. See footnote 2 to 10 U.S.C. 3991. Accordingly, he was entitled to receive retired pay during the period December 1, 1963, to February 22, 1964, inclusive, at the rate of \$813.75 per month representing 75 percent of \$1,085, the monthly active duty pay of a colonel with over 30 years of service creditable for basic pay purposes.

The total amount due the late officer as increased retired pay appears to be \$104.03, representing the difference between retired pay due him at \$813.75 per month and the amount of retired pay credited in his account at \$773.69 per month during the period December 1, 1963, to February 22, 1964, inclusive. The voucher, returned herewith, has been stated in the amount of \$180.15, apparently covering the period from October 1, 1963, instead of from December 1, 1963, only. After the amount due thereon has been corrected from \$180.15 to \$104.03, as noted above, payment on the voucher is authorized if otherwise correct.

Your request for decision cites several decisions of this Office and infers, in a general way, that the handling of Colonel Carr's

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retired pay account in the Finance Center may have been consistent with the conclusions reached in some of those decisions and inconsistent with others. In the last paragraph of your request you indicate that certain doubts exist not only with respect to the proper handling of Colonel Carr's case but also with respect to other "similar cases." However, we are not sure from your letter just what inconsistencies and doubts have been encountered. While every effort is made to be of assistance in answering questions presented by disbursing officers, we may not attempt to give a decision with respect to cases other than the one actually presented in the absence of a clear understanding of the facts and questions involved. It is believed that our disposition of the Carr case should dispel any doubt you may have had with respect to that case and, if you have doubt as to the proper handling of other similar cases, the questions involved should be referred here for decision, accompanied by a complete statement of facts.

Sincerely yours,

FRANK H. WEITZEL

Assistant Comptroller General  
of the United States

Enclosure