DECISION

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

FILE: B-204267 **DATE:** March 1, 1983

MATTER OF: Colonel Raymond W. Edwards, USMC

DIGEST:

The Defense Officer Personnel Management Act, Public Law 96-513, repealed a statute that had authorized a Marine Corps colonel to have the basic pay of a brigadier general while serving as Assistant Judge Advocate General of the Navy. Although the Act contained a general savings provision preserving rights that had "matured" on the date it took effect, "matured" rights are only those that are enforceable at law. Since service members do not have "matured" rights to future pay for services not yet performed, the general savings provision did not preserve enhanced pay rights for the colonel under the repealed statute for any future period after the repealing act became effective. Matter of Harlow and Edwards, B-204267, March 19, 1982, affirmed.

This action is the result of a request from the Acting Secretary of the Navy for our reconsideration of the conclusions reached in Matter of Harlow and Edwards, B-204267, March 19, 1982. The request has been assigned control number SS-N-1367 by the Department of Defense Military Pay and Allowance Committee.

We affirm our March 19, 1982 decision.

In the decision we determined that 2 officers serving as Assistant Judge Advocates General of the Navy had no continuing right to the basic pay of a Navy rear admiral or Marine Corps brigadier general after September 15, 1981, under provisions of 37 U.S.C. 202(1) which had directed that:

> "(1) Unless appointed to a higher grade under another provision of law, an officer of the Navy or Marine Corps serving as Assistant Judge Advocate General of the Navy is entitled to the basic pay of a rear admiral

(lower half) or brigadier general, as appropriate."

This provision of the United States Code was repealed effective September 15, 1981, by the Defense Officer Personnel Management Act (DOPMA), Public Law 96-513, approved December 12, 1980, 94 Stat. 2835. The repeal was designed to make the military pay system more uniform and to limit the officers to the basic pay of the commissioned grades actually held by them. In our decision concerning the 2 officers who were then serving as Assistant Judge Advocates General, we noted that although DOPMA contained numerous transition provisions including several which saved the pay entitlements or other rights of certain officers whose pay or standing would otherwise have been reduced as the result of enactment, no specific saving provision was included for those particular officers to prevent pay reductions that might result from the repeal of 37 U.S.C. 202(1). We noted further that DOPMA also contained the following general provision:

"GENERAL SAVINGS PROVISION

"SEC. 703. Except as otherwise provided in this Act, the provisions of this Act and the amendments made by this Act do not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before the effective date of this Act." 94 Stat. 2956.

We considered whether this general provision preserved enhanced pay rights under 37 U.S.C. 202(1) for the 2 officers due to their receipt of assignments to serve as Assistant Judge Advocates General before DOPMA became effective on September 15, 1981, but we found no basis to hold that their entitlement to enhanced pay under 37 U.S.C. 202(1) prior to the statute's repeal on that date meant that they had a matured right to such pay continuing beyond the date of repeal. We therefore concluded that the general savings provision did not give the 2 officers entitlement to a rate of basic pay above that prescribed for the commissioned grades they actually occupied for any period after September 15, 1981.

In requesting reconsideration of that decision, the Acting Secretary indicates that one of the officers involved, Bruce A. Harlow, was in fact promoted from the Navy commissioned grade of captain to that of rear admiral prior to September 15, 1981, and consequently Admiral Harlow experienced no reduction of pay as the result of the repeal of 37 U.S.C. 202(1) on that date. However, the other officer, Colonel Raymond W. Edwards, USMC, had his basic pay reduced from the rate of a Marine Corps brigadier general to that of a colonel on the date of repeal. Thus, the request for reconsideration pertains to Colonel Edwards alone.

Essentially, the Acting Secretary suggests that the general savings provision of DOPMA should be construed to give Colonel Edwards continued entitlement to the basic pay of a brigadier general for periods after September 15, 1981. He states that the general savings provision protects rights which had "matured" on that date, and that while neither DOPMA nor the legislative documents relating to its enactment provide a specific definition for the term "matured," ordinarily in law a claim or right is viewed as "matured" when the claimant becomes entitled to a legal remedy to enforce it. He suggests that Colonel Edwards acquired an enforceable statutory entitlement under 37 U.S.C. 202(1) to the basic pay of a brigadier general when he was assigned to serve as Assistant Judge Advocate General of the Navy on April 1, 1981, so that his right to the brigadier general's pay "matured" at that time and could therefore qualify as a right preserved by the general savings provision. The Assistant Secretary suggests that this construction of the general savings provision would be consistent with the intent of the Congress in enacting DOPMA, particularly since, historically, legislative acts modifying military and naval pay scales, ranks, rates, or other entitlements have generally included saving clauses to preclude reductions in pay resulting from reclassification or reassignment upon the effective date of the new legislation.

We are unable to agree completely with this reasoning.

It is well settled that the Congress may prospectively reduce the pay of members of the uniformed services, even if that reduction deprives members of benefits they had expected to be able to earn. See United States v.

Larionoff, 431 U.S. 864, 879 (1977); United States v. Dickerson, 310 U.S. 554, 555-556 (1940). The DOPMA legislation which became effective in 1981 reduced or eliminated many such inchoate rights or expectations relative to future pay benefits, and we have held that those benefits were preserved only to the extent expressly enumerated under terms of the saving clauses contained in the legislation. See Matter of Rushlo and Bradley, B-205339, June 15, 1982, 61 Comp. Gen. ___.

As the Acting Secretary notes, the general savings provision of DOPMA, quoted above, preserves all rights that "matured" before the legislation became effective on September 15, 1981. We agree that a "matured" right is one that has become legally enforceable. See, generally, Stahl v. Ohio River Company, 424 F.2d 52, 54-55 (3rd Cir. 1970); Government of the Virgin Islands v. Brown, 221 F.2d 402, 405 (3rd Cir. 1955); Walker v. United States, 180 F.2d 217, 218 (7th Cir. 1950); Stoller Fisheries, Inc. v. American Title Insurance Co., 258 N.W. 2d 336, 342 (Ia. Sup. Ct. 1977). Compare also De La Rama S.S. Co. v. United States, 344 U.S. 386, 389-390 (1953); and 37 Comp. Gen. 662, 665 (1958), concerning the preservation of matured, enforceable rights under general savings provisions similar to the one here in question.

Our view is that on September 15, 1981, Colonel Edwards did have a "matured," enforceable statutory right to the basic pay of a Marine Corps brigadier general for periods covering his past service as Assistant Judge Advocate General of the Navy. However, on that date he did not have a "matured" right to the basic pay of a brigadier general, or to any pay whatever, for periods after that date, since military pay becomes due and payable only after service is performed, and service members have no enforceable right actionable at law to collect pay they might expect in future for services not yet performed. Hence, we conclude that on September 15, 1981, Colonel Edwards did not have a "matured" right to the basic pay of a brigadier general for any future period, and that his entitlement to such pay therefore terminated on that date upon the repeal of 37 U.S.C. 202(1).

Accordingly, we have no basis to revise the conclusions reached in our March 19, 1982 decision, and that decision is affirmed.

for Milton J. Socolar
Comptroller General
of the United States