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DECISION



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

FILE: B-210789

DATE: July 6, 1983

MATTER OF: Chief Master Sergeant James M. McCoy, USAF
(Retired)

DIGEST: The retired pay of a member who was Chief Master Sergeant of the Air Force prior to entering terminal leave status, at which time his status reverted to chief master sergeant, and who retired under 10 U.S.C. § 8917 effective November 1, 1981, may be computed based on the special rate for Chief Master Sergeant of the Air Force in effect prior to his commencing terminal leave or on the basis of the grade in which he was serving at the time of his retirement as a chief master sergeant.

The question for consideration is whether a former Chief Master Sergeant of the Air Force is entitled to compute his retired pay on the basis of the rate of pay for that position at the time of his retirement which followed a period of terminal leave during which another member had been appointed to the position of Chief Master Sergeant of the Air Force. His retired pay may be computed on the basis of the special rate of pay he received while occupying that position or on the rate of pay he was receiving at the time of his retirement as a chief master sergeant (E-9).

The question was presented by an Accounting and Finance Officer, Headquarters, Air Force Accounting and Finance Center. The request was forwarded to this Office by letter from Headquarters United States Air Force, and has been assigned Air Force Submission No. DO-AF-1414 by the Department of Defense Military Pay and Allowance Committee.

The position of Chief Master Sergeant of the Air Force is established under Air Force Regulation 39-2 which provides that the member who is to occupy this position will be selected from the enlisted members of the Air Force under criteria established by the Chief of Staff, and that the tenure of the member is at the discretion of the Chief of Staff. Additionally, while the member is serving in the position he is entitled to a special rate of pay as set pursuant to 37 U.S.C. §§ 203 and 1009. The regulation also provides that members who

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continue on active duty after they complete the tour of duty as Chief Master Sergeant of the Air Force revert to the grade of chief master sergeant (pay grade E-9), until retirement. On retirement they will be advanced to Chief Master Sergeant of the Air Force (special pay grade) for the purpose of retirement.

James M. McCoy was Chief Master Sergeant of the Air Force between August 1, 1979, and July 31, 1981. During the period August 1 through October 31, 1981, the date of his retirement, Sergeant McCoy was on terminal leave. While in the terminal leave status, the member's pay reverted to the rate for a chief master sergeant (E-9) with over 26 years service for longevity purposes. We have been informally advised that on August 1, 1981, a new Chief Master Sergeant of the Air Force was appointed and assumed the duties of that position.

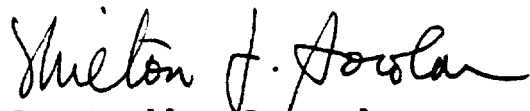
A question has arisen whether Sergeant McCoy's initial retired pay should be computed based upon the October 1, 1981 special pay rate for Chief Master Sergeant of the Air Force, which was a higher rate than the rate applicable prior to that date while Sergeant McCoy was serving in that position. The Air Force's view is that his retired pay may not be computed using the October 1, 1981 special pay rate since he was not serving in that position on that date.

Under the provisions of 37 U.S.C. §§ 203 and 1009, a member is entitled to a special rate of pay while serving as the Chief Master Sergeant of the Air Force. This special pay rate is set out in the Executive order prescribing pay adjustments pursuant to 37 U.S.C. § 1009. When Chief Master Sergeant McCoy went on terminal leave he was no longer serving in the position and his pay was computed as an E-9 with over 26 years. Air Force Manual 177-373, Volume III, paragraph 1-28(4)(b), provides that terminal leave should only be granted under certain conditions, among which are that the member has copies of his retirement or separation orders and has completed all processing and that the member agrees not to return to the unit after leave begins. Thus, it seems clear that Sergeant McCoy was no longer serving in the position of Chief Master Sergeant of the Air Force once he commenced terminal leave. Additionally, only one enlisted member of the Air Force may serve as Chief Master Sergeant of

the Air Force. A new Chief Master Sergeant of the Air Force assumed that position on August 1, 1981, thereby precluding any claim by Sergeant McCoy to the special rate of pay for the position after August 1, 1981.

Section 8991 of title 10, footnote 3, provides that an enlisted member of the Air Force who has served as Chief Master Sergeant of the Air Force may compute his retired pay on the basis of highest rate of pay applicable to him while he so served, if that rate is higher than the rate otherwise applicable. That is, the highest rate of pay applicable to him while he occupied the position may be used in the computation of his retired pay if it is higher than the rate otherwise applicable. See 47 Comp. Gen. 696 (1968) answer to question d, involving a similar provision applicable to senior commissioned officers.

Accordingly, since Sergeant McCoy was not serving in the position of Chief Master Sergeant of the Air Force on October 1, 1981, nor on the date of retirement, November 1, 1981, he is not entitled to compute his initial retired pay on the basis of the rate of pay of that position which went into effect on October 1, 1981. The voucher will be retained here.

for 
Comptroller General
of the United States