



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Captain Milton D. Beach, USN, Retired--
Reconsideration

File: B-238189.2

Date: July 27, 1991

DIGEST

A payment characterized as a bonus made to a retired member of a uniformed service employed by the government which is awarded by raising his rate of pay temporarily must be included in computing the reduction in retired pay required by 5 U.S.C. § 5532(c) where cognizant authorities have concluded that there is no statutory authority for the payment of bonuses and the payment is treated as basic pay for other purposes. 69 Comp. Gen. 338 (1990) is overruled.

DECISION

This action is in response to a request from the Financial Clerk of the Senate for reconsideration of our decision Captain Milton D. Beach, USN, Retired, 69 Comp. Gen. 338 (1990). In that decision we concluded that a payment to a retired member employed in a civilian position by the government, characterized as a bonus, should not be considered in computing the reduction in retired pay required by 5 U.S.C. § 5532(c). As requested, we have reconsidered the matter and have concluded that the amount paid in this case need not be considered as a bonus in view of the position of the Financial Clerk, informally concurred in by staff members of the Senate Committee on Rules and Administration, that there is no authority to pay a bonus to an employee of the Senate. Thus, the additional pay should not be treated as a bonus for purposes of dual compensation pay cap calculations.

In our original decision, we addressed the question of whether an amount of money, identified as a bonus, paid to a retired service member who is also employed at the U.S. Senate should be considered part of the employee's basic pay for purposes of calculating reductions in retired pay under the Dual Compensation Act, 5 U.S.C. § 5532.

The submission in our original decision stated that the employee had been awarded a "performance bonus." The record shows that his basic salary had been increased and subsequently decreased to reflect what appeared to be a bonus. In addition, a letter from the Financial Clerk to the Navy Finance Center stated that the Senator involved considered the raise granted to the employee to be a bonus. The letter also indicated that the pay was increased and decreased in this manner because there is no other procedure for awarding a bonus under the Senate pay system. We accordingly assumed that the temporary pay increase under consideration was, in fact, a bonus.

In his request for reconsideration, the Financial Clerk states that the only statutory authority for paying Senate staff is 2 U.S.C. § 61-1, and that the subsection provides for the payment of salary only. Thus it is the view of the Financial Clerk that there is no authority in that subsection or elsewhere for the payment of bonuses. Therefore, when requested to pay a bonus to a person employed by a Senator, the Senate Disbursing Office increases and subsequently decreases the basic level of pay of the employee.

Additionally, the Financial Clerk states that temporary pay increases of the kind here under discussion are treated as basic pay for other purposes. Employees thus are credited with additional earnings for retirement purposes, life insurance coverage, and thrift savings. The Financial Clerk points out that it would be inconsistent to treat these amounts as pay increases for certain purposes and as bonuses for others. Moreover, we have been informally advised by the Senate Disbursing Office staff and staff of the Senate Committee on Rules and Administration that the statute authorizing the pay of Senate employees does not provide authority to pay bonuses.

The statutory provision in question, 2 U.S.C. § 61-1, provides for the compensation of Senate employees on the basis of an annual rate of pay in accordance with maximum amount limitations specified in the statute. It provides no explicit authority for the payment of bonuses, as do statutes governing the pay of executive branch employees who are eligible for bonuses. See, e.g., 5 U.S.C. § 5384.

We also recognize that it would be inconsistent to treat a temporary salary increase as a bonus for dual compensation purposes while not so treating it for retirement, life insurance, or thrift savings purposes, particularly where the benefit in each instance runs to the employee.

Accordingly, where, as here, cognizant authorities have concluded that there is no statutory authority to pay bonuses,

temporary pay increases, even though intended as bonuses, must be included in the dual compensation calculations required by 5 U.S.C. § 5332. 69 Comp. Gen. 338 (1990) is therefore overruled.

Increases received by retired members which were not included in dual compensation calculations as a result of our earlier decision need not be collected from the retired members. However, future increases in pay in such circumstances should be included in the dual compensation calculations.

for Milton L. Fowler
Comptroller General
of the United States