



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Chief Warrant Officer Louis C. Morrison, USAF
(Retired)

File: B-239348.2

Date: November 18, 1991

DECISION

We have been asked to settle the claim of Chief Warrant Officer Louis C. Morrison, USAR (Retired), for recomputation of his retired pay to reflect 4 years of reserve duty which he performed after his retirement from the active service. He is entitled to include the number of active duty days he served between his retirement and September 30, 1963, for the purpose of recomputation of his retired pay. However, based on the record before us we are unable to determine whether he performed sufficient active duty to increase his retired pay.

Mr. Morrison retired as an Army reserve warrant officer under 10 U.S.C. § 1293 on July 31, 1960, after 20 years and 1 day of active service. He then entered the Army reserve and served in a reserve capacity until March 24, 1964, when he was transferred to the retired reserve. He states that he was told at that time that when he reached the age of 60 his retired pay would be recomputed to reflect an additional 4 years of service. Mr. Morrison received retired pay during the 4 years in question but waived it periodically to receive reserve pay for the days he actually served on reserve duty.

According to 10 U.S.C. § 1402(a), a member who has become entitled to retired pay computed under 10 U.S.C. § 1401 and thereafter serves on active duty (other than for training) is entitled to recompute his retired pay upon his release from active duty according to a formula set forth in § 1402(a). Section 1402 was derived from § 516 of the Career Compensation Act of 1949, ch. 681, 63 Stat. 819, 832, which allowed recomputation "for all active duty performed after retirement." The exclusionary phrase "other than for training" was added to § 1402(a) by Pub. L. No. 88-132, 77 Stat. 210, effective October 1, 1963.

Recomputation of retired pay under section 1402(a) is accomplished by multiplying a member's monthly basic pay upon release from active duty by a multiplier computed at


2.5 percent for each year of service including active service after retirement. A part of a year which is at least 6 months will be counted as a whole year.

In 39 Comp. Gen. 241 (1959), we discussed recomputation of a member's retired pay to reflect reserve duty performed after retirement. We said that qualifying reserve time under 10 U.S.C. § 101(22) would increase the multiplier factor for recomputation of retired pay. (The decision was written before the 1963 amendment to 10 U.S.C. § 1402(a) which excluded training).

Mr. Morrison is not entitled to simply add an entire year to his active service for each year in the reserves. For most of those 4 years, he was in receipt of retired pay and not on reserve duty. He is only entitled to include in his multiplier the number of days he served in full-time training duty and annual training duty between August 1, 1960, and September 30, 1963, when 10 U.S.C. § 1402(a) was amended to exclude training duty. His multiplier would not increase unless he served at least 6 months of active duty after retirement. It is not possible from the record submitted to us to determine whether recomputation would yield any increase in Mr. Morrison's retired pay.

While it is unfortunate that Mr. Morrison was incorrectly advised that all his reserve time would be added to his 20 years of active duty at age 60, the government is not bound by the erroneous advice given by its officers, agents, or employees. Major Jean-Francois J. Romey, USAF, B-216466, November 14, 1984.

Finally, if an increase in retired pay results from recomputation, payment would be limited in accordance with the Barring Act, 31 U.S.C. § 3702.


for James F. Hinchman
General Counsel