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**DECISION**



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

9771

FILE: B-193199

DATE: April 11, 1979

MATTER OF:

[REDACTED]

**DIGEST:**

The provision authorizing a 10 percent "good conduct" increase added to retired pay of enlisted members of the Coast Guard who retire from the Coast Guard after 20 years' service was repealed by Public Law 88-114 except that a saving provision retained the 10 percent increase for those on active duty with the Coast Guard on September 6, 1963. The saving provision is construed, in view of its purpose, to include members who were in another branch of the armed services on September 6, 1963, or who were not in any armed service on that date, as long as they were on active duty with the Coast Guard prior to September 6, 1963, subsequently obtained eligibility for retirement from the Coast Guard as enlisted members and retired with the requisite good conduct marks.

This action is in response to a request for an advance decision from Mr. E.J. Rowe, Authorized Certifying Officer, United States Coast Guard, regarding the inclusion of a 10 percent good conduct increase in the retired pay of

[REDACTED], and others similarly situated. The request has been assigned Control No. ACO-CG-1304, by the Department of Defense Military Pay and Allowance Committee.

The service record of [REDACTED] indicates that after about 4 years' service in the Navy, he served on active duty as an enlisted member in the Regular Coast Guard from January 1958, to January 5, 1962, and again from January 10, 1960, until his retirement on September 1, 1974. Between these two periods of Coast Guard service he served as an enlisted member of the Air Force from January 9, 1962, to January 7, 1966. On September 1, 1974, [REDACTED] retired from the Coast Guard under the authority of 14 U.S.C. 355 (1970) which provides for the retirement of any enlisted member of the Coast Guard who has completed 20 years' service.

Prior to September 6, 1963, any enlisted member of the Coast Guard who retired by reason of 20 years' service was entitled to have his retired pay increased by 10 percent of the active-duty pay of the grade or rating with which retired if his average marks in conduct during his service in the Coast Guard were not less than 97 1/2 percent of the maximum. 14 U.S.C. 357(c)(1958). This provision was repealed September 6, 1963, by Public Law 88-114, 77 Stat. 144. However, in repealing the provision a saving provision was included as section 2 of Public Law 88-114, which provided as follows:

"The amendment made by subsection (1) of section 1 of this Act [the repeal of the good conduct 10 percent increase] does not apply to any enlisted man in service on the effective date of this Act."

Since his retirement, [redacted] retired pay has not included the 10 percent good conduct pay. The reason given for the withholding of the increase was that [redacted] was not on active duty with the Coast Guard on September 6, 1963; he was in the Air Force at that time. [redacted] contends that since he retired with the requisite marks in conduct he is entitled to this increase for two reasons. First, upon reenlisting in the Coast Guard in 1966 he was assured by a Coast Guard recruiter that he would still be eligible for the good conduct pay since he was in the Coast Guard prior to September 6, 1963. Second, he argues that the good conduct increase should be applicable to any enlisted man in active Coast Guard service on or before September 6, 1963.

Concerning [redacted] reliance upon the statement which the Coast Guard recruiter may have made, it is well established that, in the absence of a statute so providing, the Government is not liable for the negligent or erroneous acts or statements of its officers or employees even though committed in the performance of their official duties. See Parker v. United States, 198 Ct. Cl. 661 (1972), and Federal Crop Insurance Corporation v. Merrill, 332 U.S. 380 (1947). The issue, therefore, is whether the term "in service" as

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used in Public Law 88-114 pertains only to Coast Guard service or to service in any of the other branches of the military. Entwined with the above is the issue of whether the Act pertains to all enlisted men who were in the Coast Guard on or before September 6, 1963, or only to those who were in the Coast Guard on September 6, 1963.

The legislative history of Public Law 88-114 shows that Congress did not expressly consider the situation where a person served in the Coast Guard prior to September 6, 1963, was in another branch of the armed services on that date (or was not in any service on that date) and then later rejoined and retired from the Coast Guard. No doubt Congress had in mind the normal situation where a man serves continuously until his retirement. The legislative history and background of the law also point out that one of its major aims was to bring the Coast Guard's retirement laws more in line with those applicable to the other armed forces. The bill as introduced would have retained the bonus for all men who had 4 or more years' service on the theory that it would be unfair to reduce benefits on which the men had reason to rely when they decided to reenlist and make a career in the Coast Guard. However, Congress took the view that this reasoning applied to all regardless of the number of years of service, and accordingly, amended the bill to reflect this. See House Report No. 603, 88th Cong. 1st sess. (1963).

With regard to the enactment of legislation relating to retired pay Congress has generally followed a policy of retaining for enlisted members benefits held out to them at the time of enlistment and later abolished or modified for those enlisting at a later date. Sanders v. United States, 120 Ct. Cl. 501 (1951). This appears to have been its purpose in enacting the saving provision in Public Law 88-114. That is, it was reaffirming its bargain with those who had enlisted in the Coast Guard prior to September 6, 1963, with the expectation that upon retirement from the Coast Guard they would be entitled to a good conduct increase in their retired pay.

By enacting Public Law 88-114, supra, Congress was not taking away rights already acquired. (Compare 45 Comp. Gen. 793 (1966)). Therefore, we hold that the saving provision

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applies to retired enlisted members of the Coast Guard who served on active duty in the Regular Coast Guard on or before September 6, 1963. Compare Talbert v. United States, 147 Ct. Cl. 439 (1959). Thus, members who served in the Regular Coast Guard before September 6, 1963, but who were not serving in the Coast Guard on September 6, 1963, and who later retired from the Coast Guard, are entitled to the 10 percent good conduct increase, if otherwise qualified. This is our view whether on September 6, 1963, such members were in another service or in civilian life.

Accordingly, [REDACTED] is entitled to receive a 10 percent good conduct increase in retired pay. The voucher received with the submission is being returned for payment.

  
Deputy Comptroller General  
of the United States