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DECISION

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THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548GUYITZ
PLM 2

FILE: B-204267

DATE: March 19, 1982

MATTER OF: Captain Bruce A. Harlow, USN, and
Colonel Raymond W. Edwards, USMC

DIGEST: The Defense Officer Personnel Management Act, Public Law 96-513, repealed a statute authorizing enhanced pay for officers serving as Assistant Judge Advocates General of the Navy. Although that Act contained various transitional provisions protecting the pay of individuals against reduction as a result of enactment, no specific provision related to the pay of these individuals. The general savings provision in the Act relates, as applicable here, to rights which have matured. These officers had no matured right to continuation of their pay at the enhanced rate.

This action is in response to correspondence received from the Acting Secretary of the Navy, who requests our decision on the question of whether Captain Bruce A. Harlow, USN, and Colonel Raymond W. Edwards, USMC, have retained the right to basic pay at the rate prescribed for pay grade O-7 while continuing to serve as Assistant Judge Advocates General of the Navy during periods after September 15, 1981, under provisions of the Defense Officer Personnel Management Act which became effective on that date. The request has been assigned Control Number SS-N-1367 by the Department of Defense Military Pay and Allowance Committee.

We have concluded that Captain Harlow and Colonel Edwards are not entitled to basic pay computed at the rate prescribed for pay grade O-7 for periods after September 15, 1981.

Captain Harlow and Colonel Edwards both began serving as Assistant Judge Advocates General of the Navy prior to September 15, 1981. Subsection 202(1) of title 37, United States Code, as in effect prior to that date, provided as follows:

"(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."

In accordance with the above-quoted terms of 37 U.S.C. 202(1), the two officers acquired a right to the basic pay of a Navy rear admiral and a Marine Corps brigadier general, pay grade O-7, when they began serving as Assistant Judge Advocates General of the Navy. See Selman v. United States, 204 Ct. Cl. 675 (1974); and 55 Comp. Gen. 58 (1975). Otherwise, they would have been entitled to basic pay only at the lower rate prescribed for pay grade O-6, consistent with the commissioned grades actually held by them, i.e., Navy captain and Marine Corps colonel. See 37 U.S.C. 201.

Sections 401 and 701 of the Defense Officer Personnel Management Act, Public Law 96-513, approved December 12, 1980, 94 Stat. 2904 and 2955, amended title 37 of the United States Code by repealing 37 U.S.C. 202(1), effective September 15, 1981. This repeal was designed to limit the entitlement of officers serving as Assistant Judge Advocates General of the Navy to the basic pay of the commissioned grades actually held by them. See S. Rep. No. 375, 96th Cong., 1st Sess. 45 (1979). Title VI of the Defense Officer Personnel Management Act contains numerous transition provisions including several which save the pay entitlements or other rights of certain officers whose pay or standing would otherwise be reduced as a result of enactment. Section 614 specifically deals with the transition to the new commodore admiral grade and the repeal of subsections (a) through (d) of 37 U.S.C. 202. However, no specific savings provision is included relating to the repeal of subsection (1) relating to the officers here in question. The Act also contains the following savings provision at 94 Stat. 2956:

"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."

The Acting Secretary of the Navy questions whether the general savings provision contained in the Defense Officer Personnel Management Act has operated to preserve the O-7 basic pay entitlement of Captain Harlow and Colonel Edwards for periods after September 15, 1981.

It is a settled rule of statutory construction that if a right is created by and exists solely because of a statute, a repeal of the statute has the effect of terminating the right to the extent that it is not preserved in a savings clause. See, e.g., 30 Comp. Gen. 65, 66 (1950). The terms of a savings clause may, however, continue a repealed statute in force as to vested or matured rights existing at the time of the repeal. 1A SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION 21.12, 23.39 (4th ed. C.D. Sands 1972).

In the present case Captain Harlow and Colonel Edwards were assigned to serve as Assistant Judge Advocates General. They were not promoted or otherwise entitled to the grades of rear admiral or brigadier general but retained their lower grade and status. Only by virtue of the existence of 37 U.S.C. 202(1) did they have any entitlement to be paid at the higher O-7 level. After this provision was repealed no right to the higher rate of pay existed. Further, we find no basis to hold that the receipt of such a higher rate of pay prior to the effective date of the Act may be considered to be a continuing right or a right that had matured. These officers were allowed extra pay while serving in the position of Assistant Judge Advocates General, but were given no continuing right to a grade or rate of pay above that of the grade they actually occupied. When the special pay provision was repealed without a specific savings clause they reverted to their lower pay rate.

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Accordingly, Captain Harlow and Colonel Edwards are not entitled to pay above the O-6 rate unless entitled to promotion under some other provision of law.

for *Shelton J. Fowler*
Comptroller General
of the United States