

146800



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

Decision

Matter of: Chief Warrant Officer Steven C. Baker, USAR--
Claim for Saved Pay

File: B-245028.2

Date: June 4, 1992

DIGEST

A captain in the Army Reserve accepted a position as a chief warrant officer. He is not entitled to continue the pay level and allowances of a captain, since 37 U.S.C. § 907 does not protect the pay and allowances of a member who accepts a lower grade.

DECISION

This is in response to a claim by Chief Warrant Officer Steven C. Baker, USAR, to continue the pay level of his previous rank of captain after his change to chief warrant officer. For the reasons presented below, his claim is denied.

Mr. Baker's change in rank occurred in April 1989. He continued to receive the pay of a captain until October 1989. Thereafter, his pay was reduced and collection of the overpayment was initiated. Mr. Baker claims saved pay at his former rank.

The relevant statute, 37 U.S.C. § 907(b), addresses pay issues arising when a warrant officer becomes a commissioned officer, but not the reverse.¹ Therefore, it does not address the issues presented here.

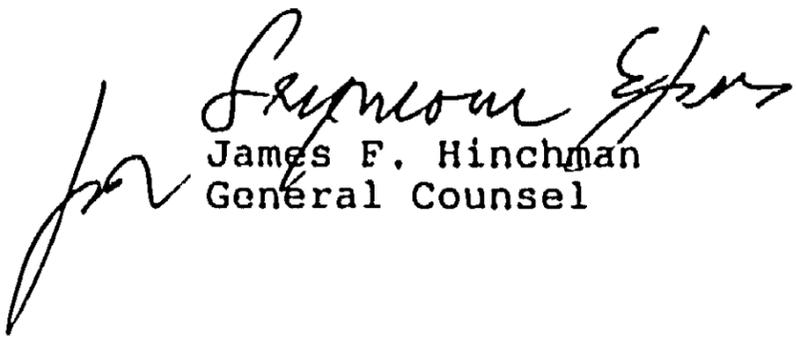
The legislative history of 37 U.S.C. § 907, Pub. L. No. 91-484 § 1(1), 84 Stat. 1083 (1970), indicates that saved pay was enacted so that senior enlisted members could accept warrants or commissions without incurring decreases in pay

¹37 U.S.C. § 907(b) provides that a warrant officer who accepts an appointment as a commissioned officer shall be paid the greater of (1) the pay and allowances of his commissioned rank and (2) the pay and allowances of the last warrant officer grade he held before he accepted the appointment.

and allowances. See H.R. Rep. No. 1141, 91st Cong., 2d Sess. 1-2 (1970). Later, the law was amended to give the same protection to warrant officers who accept appointments as commissioned officers. See Pub. L. No. 96-343 § 6(a)(1), 94 Stat. 1126. There is no indication of congressional intent to protect the pay and allowances of members who accept lower grades. The purpose of the law, to attract experienced members into the officer ranks, would not be served by applying the law in that way.

Mr. Baker argues that the Army's application of the law in Department of Defense Military Pay and Allowances Entitlements Manual, paragraph 10221, and Army Regulation 37-104-10 to protect the pay and allowances of members who accept higher grades but not those who accept lower ones is prejudicial. The Army's policy is in accord with 37 U.S.C. § 907. If Mr. Baker intends here to raise a constitutional issue, we must note that it is not the role of this Office to question the constitutionality of a statute. That is a matter reserved for the courts. Inter-Con Security Systems, Inc., B-186347, 185495, March 7, 1977.

Accordingly, Mr. Baker's claim is denied.


James F. Hinchman
General Counsel