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

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*Released*

B-162852

March 18, 1980

The Honorable Mark O. Hatfield  
United States Senator  
Post Office Box 732  
Salem, Oregon 97308

Dear Senator Hatfield:

Reference is made to your letter of January 23, 1980, with enclosures, addressed to the Army Chief of Legislative Liaison, written on behalf of your constituent, Master Sergeant \_\_\_\_\_, USA, Retired, requesting a review and further consideration of our decision B-162852, March 22, 1973 (52 Comp. Gen. 599), rendered in his case, copy enclosed.

In that decision, we held that Sergeant \_\_\_\_\_ was not entitled to have his retired pay increased by 10 percent based on the award of the Soldier's Medal because the provisions of law under which his retired pay was recomputed (10 U.S.C. 1402), did not authorize such increase. We concluded by saying that while there is an apparent inequity in such a situation, in the absence of specific language in that section, an increase in retired pay for an act of extraordinary heroism which occurred during a period of post-retirement active duty is not authorized.

The salient facts in Sergeant \_\_\_\_\_ case are that he was retired from the Army in the grade of E-7 in 1963 under the provisions of 10 U.S.C. 3914 with retired pay computed under Formula C of 10 U.S.C. 3991; he was recalled to active duty in 1965; and he was released from that duty in 1972. Upon that release, he became entitled to recompute his retired pay in the manner prescribed by 10 U.S.C. 1402 in the grade of E-8 to which he had been promoted while on active duty during that period. The record shows that he was awarded the Soldier's Medal while performing active duty during that post-retirement period.

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The right of a member of the uniformed services to receive retired pay, and in a specific amount, is limited by the provisions of law which are in effect at the time of retirement. In situations involving a retired member's recall to active duty and return to the retired list, such rights as he may have are limited to those provisions of law which permit recomputation of retired pay to reflect post-retirement active duty.

The provisions of law under which Sergeant was authorized to compute his retired pay at the time of his initial retirement in 1963 (Formula C, 10 U.S.C. 3991), specifically authorized the 10 percent increase in retired pay for a certified act of extraordinary heroism performed prior to retirement. Had Sergeant been awarded the Soldier's Medal prior to his initial retirement in 1963, his retired pay entitlement at that time would have been properly increased by 10 percent. However, the provisions authorizing recomputation of retired pay (10 U.S.C. 1402), do not contain language similar to that contained in Formula C of 10 U.S.C. 3991, nor is there any evidence in the legislative history of 10 U.S.C. 1402, to indicate that an act of extraordinary heroism, if performed during a post-retirement period of active duty, was to be similarly rewarded.

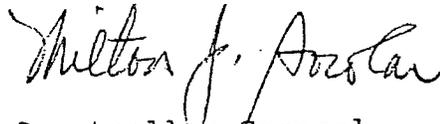
We recognize the apparent inequity in a situation such as this, where a member in similar circumstances who initially retires is entitled to the additional retirement pay whereas Sergeant Caddell, because he was previously retired was not entitled to that benefit. However, in the absence of a provision specifically authorizing the 10 percent increase for extraordinary heroism for retired pay recomputation purposes under 10 U.S.C. 1402, Sergeant Caddell's recomputed retired pay may not be so increased.

We regret that a more favorable reply cannot be made and trust that this will serve the purpose of

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your inquiry. The enclosures with your letter are returned herewith.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Milton J. Arnold".

For the Comptroller General  
of the United States

Enclosures