

DOCUMENT RESUME

03784 - [B2733955]

Department of Defense Military Pay and Allowance Committee
Action No. 533. B-153331, September 26, 1977. 9 pp.

Decision re: Department of Defense: Military Pay and Allowance
Committee; by Robert F. Keller, Acting Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation
(205).

Contact: Office of the General Counsel: Military Personnel.

Budget Function: National Defense: Department of Defense -
Military (except procurement & contracts) (051).

Authority: 37 U.S.C. 301. Air Force Regulation 35-13. Air Force
Regulation 35-5. Air Force Regulation 10-7. Air Force
Regulation 60-1. 43 Comp. Gen. 667. 44 Comp. Gen. 426. 47
Comp. Gen. 728. E-164186 (1969). Executive Order 11157, sec.
112-3, as amended. DOD Military Pay and Allowances
Entitlements Manual, para. 20305.

The Assistant Secretary of Defense (Comptroller) requested an advance decision concerning the entitlement of Air Force pararescue members to dual hazardous duty incentive pay. A member of the uniformed services is entitled to dual payments of hazardous duty pay provided he is required to perform specific multiple hazardous duties in order to carry out his assigned mission and otherwise meets the criteria established by departmental regulations. Although the payment of dual hazardous duty incentive pay to pararescue team members who perform aircrew duties and no other hazardous duty in addition to flying and parachute jumping is prohibited by DOD regulations, those regulations may be amended to authorize such dual payments.
(Author/SC)

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Haritz
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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20547

FILE: B-153331

DATE: September 26, 1977

MATTER OF: Department of Defense Military Pay and Allowance Committee Action No. 533

- DIGEST:
1. A member of the uniformed services is entitled to dual payments of hazardous duty incentive pay, provided he is required to perform specific multiple hazardous duties in order to carry out his assigned mission and otherwise meets the criteria established by departmental regulations. 37 U. S. C. 301(e) (1970) and Executive Order No. 11157, June 22, 1964, as amended. However, such duties need not be performed simultaneously or in rapid succession as was stated in 44 Comp. Gen. 426 which, to that extent will no longer be followed.
 2. Air Force pararescue team members may qualify for hazardous duty incentive pay as aerial crewmembers, provided they are an integral part of an aircrew contributing to the safe and efficient operation of an aircraft, and their flight duties are not merely incidental to their duties involving parachute jumping. 37 U. S. C. 301(a) (1970).
 3. While the Department of Defense Military Pay and Allowances Entitlements Manual currently prohibits dual payment of hazardous duty incentive pay to pararescue team members who perform aircrew duties and no other hazardous duty in addition to flying and parachute jumping, those regulations may be amended to authorize dual incentive payments to them; however, whether the regulations should be so amended is ultimately a matter for evaluation and determination by appropriate Defense Department authorities.

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This action is in response to a letter dated January 17, 1977, from the Assistant Secretary of Defense (Comptroller) requesting an advance decision concerning the entitlement of Air Force pararescue members to dual hazardous duty incentive pay (HDIP), in the circumstances described in Department of Defense Military Pay and Allowance Committee Action No. 533, enclosed with the submission.

The discussion in the Committee Action indicates that 37 U.S.C. 301(a) authorizes incentive pay for the performance of hazardous duty, including the performance of parachute jumping as an essential part of military duty and the performance of frequent and regular participation in aerial flights as an enlisted crewmember. It is also indicated that while 37 U.S.C. 301(e) permits dual entitlement to HDIP, the Department of Defense has taken the position that pararescue members are not entitled to dual payment because their duties (crewmember and parachutist) are not regarded as being interdependent.

In the Committee Action discussion it is stated that because of the Southeast Asia conflict, many unit operational changes in the mission of rescue and recovery were adopted. These changes, in the opinion of the Secretary of the Air Force, necessitated a reevaluation of the duties performed by pararescue members. As a result of these changes and the reevaluation of the role of pararescue members, it is said the Secretary of the Air Force exercised the authority granted him to designate pararescue members as "primary" crewmembers. Accordingly, pararescue members are now being placed on permanent aeronautical orders as "primary" crewmembers in accordance with Air Force Regulations 35-13, 10-7, and 60-1 to fill authorized positions which require them to perform certain described flight duties. They are also placed on orders as qualified Air Force parachutists under Air Force Regulations 35-5, 10-7, and 60-1, as a prerequisite to filling authorized pararescue positions. The duties performed by pararescue members are said to be those of crewmembers and parachutists. Both duties, the Air Force asserts, are interdependent and essential to accomplishing the mission of search and rescue.

The discussion in the Committee Action indicates Air Force authorities believe pararescue personnel perform two distinct yet

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interdependent hazardous duties in rapid succession, thus meeting the requirements for entitlement to dual HDIP. However, the Committee expresses doubt as to whether the duties performed by such personnel are crewmember duties which would qualify for HDIP and if so, whether they are sufficiently interdependent with parachuting, so as to qualify such members for dual HDIP in light of previous decisions of this Office, citing 43 Comp. Gen. 837 (1964); 44 Comp. Gen. 426 (1965); and 47 Comp. Gen. 728 (1968).

Based on the foregoing, the following question is presented:

"Are Air Force para-crew personnel, who are designated as both crewmembers and parachutists under regulations prescribed by the Secretary of the Air Force, performing two hazardous duties for the purpose of entitlement to dual Hazardous Duty Incentive Pay (HDIP) under 37 U.S.C. 391(e) and Section 113 of Executive Order 1157, recommended?"

Section 301 of title 37, United States Code (Supp IV, 1974), provides in pertinent part that:

"(a) Subject to regulations prescribed by the President, a member of a uniformed service who is entitled to basic pay is also entitled to incentive pay, in the amount set forth in subsection (b) or (c) of this section, for the performance of hazardous duty required by orders. For the purposes of this subsection, 'hazardous duty' means duty--

"(1) as an enlisted crewmember, as determined by the Secretary concerned, involving frequent and regular participation in aerial flight;

"(6) involving parachute jumping as an essential part of regular duty;

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"(e) A member is entitled to not more than two payments of incentive pay, authorized by this section, for a period of time during which he qualifies for more than one payment of that pay."

Executive Order No. 1157, June 22, 1964, as amended, provides in pertinent part as follows:

"Sec. 112. Under such regulations as the Secretary concerned may prescribe, a member who performs multiple hazardous duties under competent orders may be paid not more than two payments of incentive pay for a period of time during which he qualifies for more than one such payment. Dual payments of incentive pay shall be limited to those members who are required by competent orders to perform specific multiple hazardous duties in order to carry out their assigned missions.

"Sec. 113. The Secretaries concerned are hereby authorized to prescribe such supplementary regulations not inconsistent herewith as they may deem necessary or desirable for carrying out these regulations, and such supplementary regulations shall be uniform for all the services to the fullest extent practicable."

Various regulations and policy statements initially issued by the Secretaries of the military departments concerning entitlement to dual payment of hazardous duty pay have been compiled in and superseded by paragraph 20305 of the Department of Defense Military Pay and Allowances Entitlements Manual (DODPM), which provides in pertinent part that:

"Members who qualify for incentive pay for more than one type of hazardous duty may receive no more than two payments for the same period. Dual incentive pay is limited to those members required by orders to perform specific multiple hazardous duties necessary for successful accomplishment of the mission of the unit to which assigned. A member who is under competent orders to perform more than one hazardous duty, but is entitled to only one type of

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incentive pay, may receive payment for the hazardous duty for which the higher rate of incentive pay is authorized, even though that hazardous duty is not the primary duty of his current assignment.

"a. Conditions of Entitlement. The hazardous duties for which dual incentive pay is made must be interdependent and performed either simultaneously or in rapid succession while carrying out the duties required to accomplish the mission of the unit involved. Members must meet minimum requirements for each of the hazardous duties, except when injury or incapacity as the result of performance of hazardous duty is involved.

* * * * *

"c. Types of Duties That Do Not Qualify Members for Dual Payment of Incentive Pay. The following are examples of duties not performed interdependently and for which dual incentive payments are not authorized.

* * * * *

"(3) Pararescue team members who perform aircrew duties and no other hazardous duty in addition to flying and parachute jumping."

Since paragraph 20305, DODPM, expressly provides that pararescue team members, who perform aircrew duties and no other hazardous duty in addition to flying and parachute jumping are unqualified for dual HDIP, such dual payments to the members in question are clearly prohibited by the current regulations. We therefore regard the question presented in this case as being whether the pararescue personnel performing the duties described may be classified as both primary aircrew members and primary parachutists under 37 U.S.C. 301(a), and if so, whether the DODPM may be amended under 37 U.S.C. 301(e) to permit the dual payment of HDIP to them.

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With regard to the eligibility of pararescue personnel to qualify as aircrew members as well as parachutists under 37 U. S. C. 301(a), we have previously expressed the view that in order to be entitled to incentive pay for hazardous duty as an enlisted crewman involving frequent and regular participation in aerial flight, a member must actually perform the duties of a crewmember, whose regular flight duties contribute to the safe and efficient operation of an aircraft. If he is flying as a passenger or as a person being transported to an air position from which he may perform his assigned duties as observer, parachutist, high altitude tester of aviation equipment, etc., a right to flying pay is not established. See 47 Comp. Gen. 728, supra, B-164186, August 15, 1969.

Clearly, members whose primary duties involve parachute jumping must necessarily participate in aerial flights. It may reasonably be expected of them that during such flights they will not be passive passengers only, but rather will lend such assistance to the crew as they can (in guiding the aircraft to the jump zone, etc.), and also will be prepared for emergency situations. It is, therefore, apparent that some of the described in-flight duties of pararescue team members are primarily incidental to preparing for a successful pararescue jump and are insufficient in themselves to justify crewmember status.

However, 37 U. S. C. 301(a)(1) grants the service Secretary concerned the discretionary authority to determine who shall be classified as an enlisted crewmember. If these individuals are, in fact, acting as an integral part of an aircrew in accomplishing assigned pararescue missions, we believe that payment of HDIP as crewmembers is appropriate.

With respect to the matter of amendment of the DODPM to permit dual payments of HDIP to these members, it is to be noted that 37 U. S. C. 301(e) and Sections 112 and 113 of Executive Order No. 11157 give the service Secretaries broad discretion in the promulgation of regulations. The sole restriction, contained in Section 112 of the Executive order, is that dual payments of incentive pay shall be limited to those members who are required by competent orders to perform specific multiple hazardous duties to carry out their assigned missions.

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In our decision 43 Comp. Gen. 667, supra, involving the position of Forward Air Controller, we observed that departmental regulations had at that time not yet been promulgated, and we stated on page 669, that:

"* * * Since neither the law nor the Executive order fixed when, in an otherwise proper case, dual incentive pay should commence, when it should terminate, the amount of the required dual hazardous duty that must be performed in carrying 'out their assigned missions,' the type of orders requiring such dual hazardous duty and who may issue them, etc., the absence of explicit and comprehensive administrative regulations leaves uncertain many basic matters which necessarily would be for consideration in acting on any claim for dual incentive pay."

We then expressed the view that in the absence of such regulations, forward air controllers were not entitled to dual HDIP as pilots and parachutists, particularly since no explanation had been furnished as to how parachute jumping was necessary to maintain a forward air position.

In our decision 44 Comp. Gen. 426, supra, we considered a case involving a Marine Corps member who performed two hazardous duties (aircrewman and pressure chamber observer) at separate times and concluded that he did not qualify for dual HDIP under the Executive order and then existing Navy directives, which made dual HDIP entitlement contingent upon the multiple hazardous duties being "interdependent." We noted therein that since the Navy directives did not cover the particular situation presented, it was our view that the regulatory provisions, interpreted in light of the legislative history of 37 U. S. C. 301(e), required the "interdependent" hazardous duties be performed concurrently or in rapid succession, thus precluding payment of dual HDIP to the member in that particular case under the regulations then in effect.

In our decision 47 Comp. Gen. 728, supra, we expressed the view that parachutists, who performed minor in-flight duties incidental to their primary duties involving parachute jumping, were not entitled to dual HDIP, since their in-flight duties were insufficient to justify entitlement to flight pay in addition to parachute pay and they were not actually performing multiple hazardous duties.

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Taken together, these decisions cited in the Committee Action demonstrate only, that under 37 U.S.C. 301(e) and the Executive order, a member is entitled to dual HDIP, provided he is required to perform specific multiple hazardous duties in order to carry out his assigned missions and otherwise meets the criteria established by implementing administrative regulations. It is to be further noted that when decisions 43 Comp. Gen. 667, supra, and 44 Comp. Gen. 426, supra, were rendered, the implementing regulations were either nonexistent or were vague and nondefinitive, and we had little alternative but to place heavy reliance on the legislative history of 37 U.S.C. 301(e) in our decisions concerning dual HDIP entitlement in those particular cases. That legislative history indicates Department of Defense authorities assured Congress that the statutory provision would be implemented by regulation in such a way as to prevent any possible abuses, and the examples given as illustrative of the type of multiple hazardous duties which would give rise to entitlement to dual incentive pay suggested that dual payments would be authorized only in certain limited cases. However, as previously indicated, the law and Executive order give Department of Defense authorities and not this Office the broad discretionary responsibility for formulating appropriate regulations concerning dual HDIP entitlement.

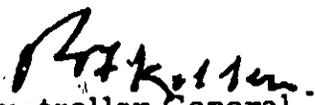
Situations in which dual HDIP payments are authorized must be limited to those in which the multiple hazards are required in the performance of the member's assigned mission. However, we do not now believe that 37 U.S.C. 301(e) must be so strictly interpreted as to limit payment of dual HDIP to situations in which both hazardous duties are performed simultaneously or in rapid succession if both duties are an integral part of the member's assigned mission. To the extent that the views expressed in 44 Comp. Gen. 426, supra, are inconsistent with this determination, that decision will no longer be followed.

In the present case, while current regulatory provisions prohibit dual payment of HDIP to the members performing the duties described, it is our view that if such members are required to carry out specific multiple hazardous duties in order to accomplish their assigned para-rescue missions, as a result of which they incur an increased risk in the course of those missions, the DODPM may be amended under the law and Executive order to authorize dual payments of hazardous duty

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incentive pay to them. Whether or not the regulations should be so amended is, however, ultimately a matter for evaluation and determination by the appropriate Department of Defense authorities.

The question is answered accordingly.


Acting Comptroller General
of the United States