

**DECISION**

034752  
THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

40998

FILE: B-179863

DATE: AUG 1 1974

MATTER OF: Increase in retired pay -  
[Entitlement] Senior Master Sergeant Roy M. Wade, USAF *AB*  
*per DLG*

DIGEST: The recomputation of the retired pay of an Air Force sergeant advanced on the retired list to second lieutenant under 10 U.S.C. 8964 must be based on rates of basic pay applicable to him "on date of retirement" as provided by footnote 1 of 10 U.S.C. 8992, which rates are those provided by Public Law 85-422, effective June 1, 1958, since he was retired June 30, 1963, and not the higher rates provided by Public Law 88-132, effective October 1, 1963.

*R* This action is in response to a letter dated September 21, 1973 (file reference RPT1), with enclosures, from Mr. N. R. Brenningstall, *118*  
*2* Chief, Accounting and Finance Division, Headquarters, Air Force Accounting and Finance Center, Denver, Colorado, requesting an advance decision as to the propriety of making payment on a voucher in the amount of \$44.48 in favor of Senior Master Sergeant Roy M. Wade, USAF, retired. That letter was forwarded to this Office by Headquarters, United States Air Force (file reference ACF), and has *549*  
*2* been assigned submission No. DO-AF-1206 by the Department of Defense Military Pay and Allowance Committee.

The submission indicates that Sergeant Wade was retired under the provisions of 10 U.S.C. 8914 in the grade of senior master sergeant on June 30, 1963, after completing 20 years, 2 months, and 1 day of active service. Reportedly, his retired pay was initially computed based on the pay rates in effect at the time of his retirement, that is, the rates effective June 1, 1958, as provided by section 201(a) of the Career Compensation Act of 1949 as amended by section (1) of the act of May 20, 1958, Public Law 85-422, 72 Stat. 122, 37 U.S.C. 232(a) (1958 ed.). Beginning October 1, 1963, his retired pay was increased by the rates of basic pay that became effective on that date under section 5(a)(1) of the Uniformed Services Pay Act of 1963, approved October 2, 1963, Public Law 88-132, 77 Stat. 212.

Effective April 30, 1973, Sergeant Wade became entitled to be advanced on the retired list under 10 U.S.C. 8964 to the highest temporary grade he had held on active duty (second lieutenant, O-1).

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with his retired pay recomputed as provided in 10 U.S.C. 8992. The voucher enclosed with the submission represents the difference in Sergeant Wade's retired pay for the period of April 30 through August 31, 1973, based on the rates of active duty pay effective June 1, 1958, and the higher rates effective October 1, 1963, as recomputed at the grade of second lieutenant, O-1, to which Sergeant Wade was advanced.

Since 10 U.S.C. 8992 provides for recomputation of retired pay based on basic pay rates "applicable on the date of retirement" but the pay rates effective October 1, 1963, would provide greater retired pay to Sergeant Wade, the question is presented as to whether Sergeant Wade's retired pay should be recomputed on the pay rates effective on October 1, 1963.

~~The~~ The statute authorizing the recomputation of Sergeant Wade's retired pay as a second lieutenant is 10 U.S.C. 8992 which provides generally that a member of the Air Force who is advanced on the retired list under 10 U.S.C. 8964 is entitled to recompute his retired pay by multiplying his years of service by 2-1/2 percent of the monthly basic pay of the grade to which he is advanced. Footnote 1 of that section specifically provides that such monthly basic pay shall be computed "at rates applicable on date of retirement."

In regard to footnote 1 of 10 U.S.C. 8992 and an identical provision relating to Army members (10 U.S.C. 3992) it is our view that in the absence of some other provision of law footnote 1 requires that the monthly basic pay rate to be used for such recomputation would be the active duty basic pay rates in effect on the date of the member's retirement. See 48 Comp. Gen. 613 (1969), and compare 45 Comp. Gen. 631 (1966); B-156593, April 8, 1966; and 49 Comp. Gen. 440 (1970).

~~As~~ As is indicated above, Sergeant Wade's retired pay was initially computed based on the rates of basic pay in effect on the date of his retirement (June 30, 1963)—the rates prescribed by Public Law 85-422 which became effective on June 1, 1958. Pursuant to section 5(a)(1) of Public Law 88-132, effective October 1, 1963, his retired pay was recomputed on the higher basic pay rates prescribed in that law which, as it appears to relate to Sergeant Wade, provides as follows:

"Sec. 5. (a) \* \* \* subject to subsection (1) of this section, a member or former member of a uniformed service

who became entitled to retired pay \* \* \* after March 31, 1963, but before the effective date of this Act, is entitled—

"(1) to have the retired pay \* \* \* to which he was entitled on the day before the effective date of this Act recomputed under the rates of basic pay prescribed by section 2 of this Act \* \* \*,"  
(Underlining added.)

Subsection 5(j) provides as follows:

"(j) A member or former member of a uniformed service is not entitled to an increase in his retired pay \* \* \* because of the enactment of this Act for any period before the effective date of this Act." (Underlining added.)

Therefore, while section 5(a) of Public Law 88-132 authorized a recomputation of Sergeant Wade's retired pay in his enlisted grade effective October 1, 1963, based on the new rates of basic pay prescribed in section 2 of that act, those rates were not in effect on the date of his retirement (June 30, 1963), nor was the recomputation authorized by ~~subsection 5(a)(1)~~ made retroactive to the date of Sergeant Wade's retirement. Also, no other provision of Public Law 88-132 of which we are aware would authorize the recomputation under 10 U.S.C. 8992 of Sergeant Wade's retired pay other than based on the rates of basic pay "applicable on date of retirement" which were the rates provided by section (1) of Public Law 85-422.

Accordingly, payment on the voucher is not authorized and it will be retained in this Office.

R.F.KELLER

Deputy  
Comptroller General  
of the United States