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DECISION

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

30556

FILE: B-181953 DATE: FEB 19 1975

MATTER OF: Constructive service credits to medical and dental officers for retired pay computation purposes-

DIGEST: Since 37 U.S.C. 205 only reduces constructive service credit for professional education of medical and dental officers by amount of service during period of member's professional education with which member is otherwise credited and since 10 U.S.C. 1405 restricts right of officers to count inactive service after May 1958 for retirement multiplier purposes, these provisions should be interpreted to permit such officer who was in the Reserves during professional training to receive the same amount of constructive service toward retirement he would be entitled to had he not been in the Reserves. However, any credit he might otherwise have accrued during the same period by reason of Reserve membership would not be for use in determining the multiplier for computation of retired pay.

This action is in response to a letter dated July 30, 1974, from the Assistant Secretary of Defense (Comptroller), requesting an advance decision concerning the interpretation which should be given to certain provisions of the act of April 30, 1956, ch. 223, 70 Stat. 119, and the act of May 20, 1958, Public Law 85-422, 72 Stat. 122, which relate to the service creditable to certain medical and dental officers for the purpose of computing their retired pay entitlement.

The Assistant Secretary states in his letter that the act of April 30, 1956, supra, was enacted for the purpose of reversing the alarming rate of losses among career medical and dental officers of the Armed Forces. The Assistant Secretary goes on to say that in order to achieve this, the act provided additional compensation to such officers through constructive service credits for pay longevity purposes. However, it is stated that section 3[2] of the act provides that the constructive service credit must be reduced by

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the amount of service otherwise creditable to medical and dental officers which covers any part of that professional education or internship.

With regard to the act of May 30, 1958, supra, the Assistant Secretary states that among other things it amended the law relating to the computation of retired pay, the effect of which was that all service, including the constructive service authorized by the 1956 act for medical and dental officers and inactive time for Reserve membership prior to June 1, 1958, would be used in determining the multiplier used in computing retired pay. However, it is pointed out that the 1958 act required that service in a Reserve component on or after June 1, 1958, could be credited only to the extent of participation as actual active service, active duty for training, day for day credit for each drill performed, credit for correspondence courses completed, and 15 days' gratuity credit for each year as a member in an active status Reserve component.

The Assistant Secretary states that a question has been raised concerning a possible inequity which may arise in certain circumstances when these two statutes are read together, whereby a member of a Reserve component receiving his professional education could be penalized in relation to a similarly situated officer who had not been in the Reserves during his professional education and internship. The following example was used to illustrate the potential inequity:

> "* * * Both [officers A and B] attended dental school from 1 June 1958 to 31 May 1962. They both were commissioned in the dental corps and entered on active duty 10 June 1962. They both will retire after 20 years continuous active duty. Officer A did not become a member of a reserve component during the period of his educational training and accordingly received a four full years of constructive credit for pay longevity purposes in accordance with P. L. 84-497. Officer B was a member of a reserve component for two years during his educational training. Accordingly, his constructive credit for pay longevity purposes is reduced by two years since his two years in the reserves is

'otherwise credited' under P. L. 85-422. Retired pay for both officers will be computed as follows:

"Officer A

2-1/2% of basic pay at time of retirement, multiplied by 24 (20 years plus 4 years constructive credit) = 60% of basic pay.

"Officer B

2-1/2% of basic pay at time of retirement multiplied by 22 (20 years plus two years constructive credit, plus 30 days representing gratuitous credit of 15 days for each of his two years as a member of a Reserve component) = 55% of basic pay."

Thus, if, as suggested in the Assistant Secretary's letter, the act of April 30, 1956, is interpreted as requiring a period of Reserve membership to be substituted for the allowable amount of constructive service credit even though such Reserve membership status is not itself counted "toward retirement" under Public Law 85-422, there would be an actual loss of virtually all credits toward retirement which would otherwise accrue for any period during which the member was both serving in the Reserves and receiving his professional training.

The Assistant Secretary suggests as a possible alternative interpretation of the statutes in question to only require a reduction of any Reserve service credits otherwise authorized which occur during any part of a member's professional education or internship which is credited as constructive service for retirement multiplier purposes. This would eliminate the "double counting" of both Reserve service and constructive service but would not penalize medical and dental officers with Reserve service.

With regard to the foregoing, the Assistant Secretary points out that if the first interpretation is correct, then remedial legislation will be necessary in order to correct the inequity. Further, that while such proposed legislation has already been prepared, our interpretation of these statutes is requested in

order to determine whether it will be necessary to have such corrective legislation introduced in Congress.

Section 2 of the act of April 30, 1956, ch. 223, 70 Stat. 121, amended section 202 of the Career Compensation Act of 1949, 37 U.S.C. 233--which on codification became in part clauses (7) and (8) of 37 U.S.C. 205(a)--to authorize physicians and dentists of the uniformed services to be credited with either four or five years of constructive service, representing the required period of professional training and, in some cases, internship, in the computation of the rate of basic pay to which they would be entitled upon entry into military service. However, another portion of section 2 of that act--which was codified as 37 U.S.C. 205(b)--provided: "that the service authorized to be credited to an officer under this clause shall be reduced by the amount of any service otherwise credited under this section which covers any part of the period of the officer's professional education or internship."

The legislative history of the 1956 act makes it clear that Congress intended to place medical and dental officers in a position comparable to their line officer contemporaries. In this regard, the following statement is contained in S. Rep. No. 1756, 84th Cong., 2nd Sess. 8 (1956) concerning the constructive service credit provision of the then proposed bill:

> "* * * By recognizing the period of professional education for longevity pay purposes, medical and dental officers would be in the same pay bracket for their grade as their line officer contemporaries who entered military service at the same time as the medical and dental officers entered their professional schools. * * *"

Also in this connection, see 37 Comp. Gen. 237 (1957) and cases cited therein.

The legislative history of the 1956 act further shows that the intent of Congress in enacting the provisions now contained in 37 U.S.C. 205(b) was to insure that periods of time for which

constructive service was to be counted for basic pay longevity purposes under the act could not be counted more than once in any case where there was otherwise creditable service for the same period. In this connection, the following statements are contained in H.R. Rep. No. 1806, 84th Cong., 2d Sess. 11 (1956):

> "Section 2 of the bill amends the Career Compensation Act of 1949 so that physicians and dentists of the uniformed services will be credited with 4 years—and in the case of physicians who have completed an internship, 5 years—constructive service credit for their professional education in computing their cumulative years of service for purposes of determining their basic pay. Under this section, a medical officer entering on active duty after completing an internship would, even though he had had no prior service, be credited with 5 years of service for pay purposes. A physician who had a military internship could not count such service twice under this section. Likewise, a person who had been a member of a Reserve component (not on active duty) while in medical school or while undergoing a civilian internship could not count such period twice for pay purposes under this section." (Emphasis supplied.)

Section 11 of the act of May 30, 1958, Public Law 85-422, 72 Stat. 130, added section 1405 to title 10, United States Code, which currently provides in pertinent part that for the purposes of the sections of title 10, relating to retirement from an armed force and therein enumerated, the years of service to be used as a multiplier in computing retired pay, are as follows:

> "(1) his years of active service;
>
> "(2) the years of service credited to him under section 205(a) (7) and (8) of title 37;
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> "(3) the years of service, not included in clause (1) or (2) with which he was entitled to

be credited, on the day before the effective date of this section, in computing his basic pay; and

"(4) the years of service, not included in clause (1), (2), or (3), with which he would be entitled to be credited under section 1333 of this title, if he were entitled to retired pay under 1331 of this title."

In S. Rep. No. 1472, 85th Cong., 2d Sess. 25 (1958), to accompany H.R. 11470, which eventually became Public Law 85-422, the following statement is made:

"The effect of this rule is to eliminate, with one exception, the future accumulation of years of nonactive service for use as a multiplier in the computation of retired pay. However, such years accumulated before the effective date of this act will continue to be credited. * * *"

Congress in enacting the 1958 military pay bill neither eliminated the longevity concept of military pay nor did it delete section 202 of the Career Compensation Act of 1949. Rather, it made conforming changes in the retirement laws with respect to the crediting of service for computing retired pay by adding section 1405 to title 10, United States Code. In this regard, it is to be observed that the provisions of clause (2) of that section specifically authorize the crediting of all medical and dental professional education and internship for retired pay purposes, and that clause (4) provisions are only creditable when and to the extent that they are not included in clauses (1), (2) or (3)."

Thus, the applicable law provides for the determination of the multiplier in computing retired pay by adding to active service the constructive service which is involved in this case. To that total may be added certain Reserve service credits but only if the credit for such service has not been allowed as active service or constructive service.

It is reasonably clear that Public Law 85-422 was not intended to alter the principle of "comparable treatment" used for purposes of computing basic pay and adopt a different method to compute

retired pay whereby medical and dental officers who did not enter military service until the completion of their professional education would be placed in a position superior to that of their own contemporaries who entered Reserve service before or during their professional training.

Accordingly, it is the view of this Office that, in the circumstances enumerated in the Assistant Secretary's letter, a medical or dental officer who was in the Reserves for a period of time during which he also was receiving his educational training would be entitled to receive the same amount of constructive service credit with which he would have been credited had he not been in the Reserves. However, any credit he might otherwise have accrued during the same period by reason of his Reserve membership would not be for use in determining the multiplier for computing retired pay.

In view of the foregoing, we conclude that remedial legislation is not required.

R.F.KELLER

Deputy Comptroller General
of the United States