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DECISION



21200
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-203401

DATE: March 18, 1982

MATTER OF: Second Lieutenant John W. Sharp, USAF

DIGEST: Army warrant officer accepted an appointment as a commissioned officer in the Air Force following his completion of training at the Air Force Officer Training School. Under the revised language of 37 U.S.C. § 907 he is entitled to saved pay as a warrant officer, notwithstanding the fact that he began officer training 6 days after he was released from active duty in the Army and the fact that he was paid as a staff sergeant while attending Officer Training School.

This action is in response to a request submitted by Lieutenant Colonel L. T. Howard, Director of Accounting and Finance, Eglin Air Force Base, Florida, for an advance decision concerning the entitlement of Second Lieutenant John W. Sharp to "saved pay" under the provisions of 37 U.S.C. § 907(b)(2) (1980). The request was assigned control number DO-AF-1362 by the Department of Defense Military Pay and Allowance Committee.

As is explained below, we find that Lieutenant Sharp is entitled to saved pay in accordance with the statutory provision.

Lieutenant Sharp was released from active duty in the Army Reserves on February 29, 1980, at the rank of chief warrant officer (W-3), following which he entered Officer Training School on March 7, 1980. While attending Officer Training School, Lieutenant Sharp was paid as a staff sergeant (E-5). Upon completion of his training, he accepted a commission as a second lieutenant in the Air Force effective June 6, 1980. The member has requested payment of saved pay under the provisions of 37 U.S.C. § 907(b).

Section 907(b) of title 37, as amended by section 6 of the Military Personnel and Compensation Amendments of 1980, Public Law 96-343, September 8, 1980, 94 Stat. 1123, 1126, provides in pertinent part:

"(b) A warrant officer who accepts an appointment as a commissioned officer in a

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pay grade above W-4 shall, for service as such a commissioned officer, be paid the greater of--

"(1) the pay and allowances to which he is entitled as such a commissioned officer;

"(2) the pay and allowances to which he would be entitled if he were in the last warrant officer grade he held before his appointment as such a commissioned officer * * *,"

Lieutenant Sharp received his commission prior to the date the amendment was enacted and prior to its effective date, September 1, 1980, as provided in subsection 6(c) of the amendments. That subsection provides that the amendments made by section 6 will be effective for pay and allowances payable for the period beginning after August 31, 1980. Under that language the new provisions have been considered applicable to officers commissioned prior to the effective date, but who would have been entitled to higher rates of pay and allowances had they remained in their former warrant officer grades. In Lieutenant Sharp's case, although he would not be entitled to saved pay from June through August 1980, he is considered entitled to such pay beginning in September if otherwise eligible.

In view of the beneficial nature of these amendments and the comparative disadvantage to members in Lieutenant Sharp's position as compared to members commissioned after the effective date if such an interpretation were not adopted, we do not question the allowance of saved pay to commissioned officers who received their commissions prior to the effective date of the amendment.

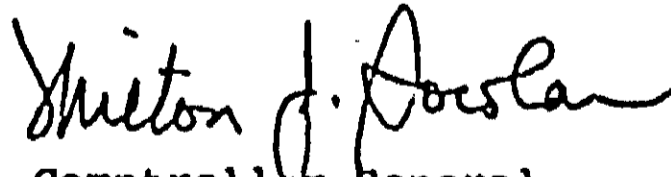
Because of the 6-day lapse between Lieutenant Sharp's release from active duty from the Army Reserves and the date he began officer training, the Air Force Accounting and Finance Center questions his entitlement to saved pay on the basis of Department of Defense Pay Manual (Pay Manual), paragraph 10221b, which implements 37 U.S.C. § 907(b). The Air Force has interpreted the regulation

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to require that there be no break in service between the last day the officer serves as a warrant officer and the first day of his appointment as a commissioned officer. The Air Force also questions payment of saved pay under the authority of the regulation because Lieutenant Sharp was paid as a staff sergeant (E-5), not as a warrant officer, while in officer training.

The Department's interpretation of the saved-pay provision is apparently based upon its regulation which implemented the Act of October 21, 1970, 84 Stat. 1083, 37 U.S.C. § 907, Pub. L. No. 91-484, § 1(1). That Act provided saved pay only for enlisted members who accepted appointments as officers. The statute entitled such an officer to the pay and allowances to which he was entitled in his last permanent appointment as an enlisted member "immediately prior to his appointment."

However, section 6 of Pub. L. No. 96-343 amended 37 U.S.C. § 907 to extend the saved-pay provision to warrant officers who are commissioned in grades above W-4. This amendment also eliminated the language that restricted the officer's saved pay entitlement to the member's pay and allowances "immediately prior to his appointment" as an officer. Under the 1980 amendment, the officer is entitled to the amount of pay he would be entitled to if he were in the last warrant officer grade that he held prior to his appointment as a commissioned officer. Thus, neither the fact that Lieutenant Sharp was not on active duty for 6 days prior to entering Officer Training School nor the fact that he was paid as a staff sergeant while in officer training would preclude his entitlement to saved pay under the statute.

for 
Comptroller General
of the United States