



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: General Ira C. Eaker, USAF (Retired) and
General James H. Doolittle, USAF (Retired)
File: B-224142
Date: November 28, 1986

DIGEST

Two retired officers of the Air Force were advanced from the grade of lieutenant general to general on the retirement lists. When retired service members are advanced in grade on the retirement lists, their retired pay may not be recalculated to reflect their advancement in the absence of statutory authority directing a recalculation. In this case, there does not appear to be an Act of Congress authorizing a recalculation of the officers' retired pay, nor does it appear that an increase in their pay was ever intended to result from their advancement on the retirement lists. In these circumstances the Comptroller General is unable to conclude that they are eligible for an increase in the rate of their retired pay.

DECISION

This action is in response to a request for a decision received from Major Glenn H. Harrison, Accounting and Finance Division, Air Force Accounting and Finance Center, on the question of whether General Ira C. Eaker, USAF (Retired), and General James H. Doolittle, USAF (Retired), are eligible to have their military retired pay recomputed at higher rates on the basis of their advancement on the retired list of the Air Force from the grade of lieutenant general to the grade of general in April 1985.^{1/} We conclude that these officers are not eligible for a recomputation of their retired pay, in the circumstances presented.

^{1/} The request for a decision in this matter was forwarded here by the Office of the Comptroller of the Air Force after it was approved by the Department of Defense Military Pay and Allowance Committee and assigned control number DO-AF-1466.

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BACKGROUND

General Eaker retired as a Regular officer of the United States Army in 1947, on the basis of his completion of more than 30 years of continuous active military duty. He was subsequently transferred to the retired list of the United States Air Force after the Department of the Air Force was established as a separate branch of the Armed Forces under the provisions of the National Security Act of 1947, 61 Stat. 495, 502-504.

General Doolittle was retired with pay upon his application as a Reserve officer of the United States Air Force in 1959 on the basis that he was then over 60 years old and had previously performed sufficient military service for retirement with pay as a reservist, such prior service including periods of extended active duty in the Army between 1917 and 1930, and between 1940 and 1946. In 1946 he had been placed in an inactive Reserve status in the Army, and he had subsequently been transferred to the Air Force in that status after the Air Force was established as a separate military department in 1947.

General Eaker and General Doolittle both entered retirement in the 3-star grade of lieutenant general, the highest grade to which they had been appointed in the course of their service in the Army. On January 3, 1985, a joint resolution providing as follows was introduced in the Senate to authorize the President to advance the two officers to the 4-star grade of general on the retired list of the Air Force:

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in recognition of the outstanding contributions to national defense of Lieutenant General Ira C. Eaker, United States Air Force (retired) and Lieutenant General James H. Doolittle, United States Air Force (retired), the President is authorized to advance Ira C. Eaker and James H. Doolittle to grade [sic] of general on the retired list of the Air Force.

"SEC. 2. Advancement on the retired list to the grade of general of Ira C. Eaker and James H. Doolittle based on the authority of this joint resolution shall not increase or change the compensation or benefits from the United States to which any person is now or may in the future be entitled based upon the military service of the said Ira C. Eaker or James H. Doolittle."

This resolution was passed by the Senate on February 21, 1985, and was forwarded to the House of Representatives with a request for concurrence on February 25, 1985. We understand that action on the resolution was deferred in the House of Representatives, however, and that subsequently the President nominated the two officers to be appointed to the grade of general under his authority in Article II, section 2, clause 2 of the United States Constitution, which provides that the President--

"* * * shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for * * *."

The nominations were received in the Senate on April 4, 1985, and were confirmed there the same day, and the Air Force advanced the officers to the grade of general on the retired list following their resulting presidential appointments to that grade.

The responsible Air Force Accounting and Finance Officer - questions whether, in these circumstances, the retired pay of the two officers should be recomputed at a higher rate on the basis of their advancement on the retired list.

ANALYSIS AND CONCLUSION

It is fundamental that the military pay entitlements of members of the uniformed services are completely dependent upon rights prescribed by statute.^{2/} Moreover, it is also a well settled general rule that the promotion of service members on the retired list may not serve as a basis for a recomputation of their military retired pay in the absence of a provision of statute specifically authorizing an increase in pay.^{3/}

^{2/} See, generally, United States v. Larionoff, 431 U.S. 864, 869 (1977); and Veterinary and Optometry Officers, 56 Comp. Gen. 943, 950 (1977).


^{3/} See Carter v. United States, 152 Ct. Cl. 334, 336 (1961). See also 10 U.S.C. § 1402(a) as an example of specific statutory authority for the recomputation of military retired pay at an increased rate, in the case of military retired personnel who are recalled to active service and perform active duty for a period of at least 6 months.

The retired pay of General Eaker is subject to computation under the statutory provisions of 10 U.S.C. § 8991, Formula A, which applies to Regular officers of the Air Force retired after more than 30 years' active service. Under that statutory formula retired pay is calculated as a percentage of the monthly basic pay of his "retired grade." The term "retired grade" for the purpose of this formula is defined by statute as the "highest grade * * * served on active duty satisfactorily." See 10 U.S.C. §§ 1370, 8961.

The retired pay of General Doolittle is subject to computation under the statutory provisions of 10 U.S.C. § 1401, Formula 3, which applies to members of the Reserve components of the Armed Forces retired with pay on the basis of non-regular service. Under that statutory formula retired pay is calculated as a percentage of the monthly basic pay of the highest grade held satisfactorily "at any time in the armed forces." This is defined by statute with respect to a Reserve officer as "the highest grade in which he served satisfactorily," as determined on the date of transfer to the retired list. 10 U.S.C. § 1374(b).

Thus, it is our view that under the applicable formulas prescribed by statute, the computation of the military retired pay of General Eaker and General Doolittle is to be predicated on the appropriate monthly rate of pay of lieutenant general, the highest grade they held prior to their retirement, in the absence of a specific provision of statute authorizing computation of their retired pay on the basis of a higher grade. We are unaware of any provision of statute which would provide for a recomputation of their retired pay predicated on the action that was taken to advance them on the retired list, nor does it appear that a recomputation of retired pay was contemplated, either in the bill initially introduced in the Congress or otherwise. Hence, we are unable to conclude that the two officers are eligible for an increase in the rate of their retired pay as the result of the action taken to advance them in grade on the retired list of the Air Force.

The voucher presented for decision may not be approved for payment and will be retained here.


Acting Comptroller General
of the United States