



The Comptroller General  
of the United States

Washington, D.C. 20548

Mitchell

## Decision

Matter of: Lieutenant Samuel B. Bromley, USCG  
File: B-232042  
Date: July 11, 1989

### DIGEST

Coast Guard member was appointed as a temporary Lieutenant 03E after serving as a temporary Chief Warrant Officer (W4) with the permanent grade of Chief Warrant Officer (W3). Because the pay and allowances of a Lieutenant were originally more advantageous the member did not receive saved pay under 14 U.S.C. § 214 and 37 U.S.C. § 907. The member now has completed 26 years of service and at that length of service the entitlements of a W4 are more advantageous than that of a Lieutenant 03E. The member is entitled to revert back to saved pay at his former temporary grade of Chief Warrant Officer (W4) under 14 U.S.C. § 214(d) (1982).

### DECISION

An authorized certifying officer of the U.S. Coast Guard requests an advance decision regarding entitlement to saved pay and allowances of Lieutenant Samuel B. Bromley. We find that Lieutenant Bromley is entitled to saved pay.

### FACTS

Lieutenant Bromley was appointed a temporary commissioned officer in the grade of Lieutenant (pay grade 03E) on February 1, 1985. Prior to that time he was serving as a temporary Chief Warrant Officer (W4) with the permanent grade of Chief Warrant Officer (W3). At the time of his appointment to Lieutenant he did not receive saved pay because the pay and allowances of a Lieutenant 03E were more advantageous. Since that time, however, he has completed 26 years of service (as of October 3, 1987) and has requested that he now be paid under the saved pay provisions as a Chief Warrant Officer (W4) since that pay grade now would be more advantageous.

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While the Coast Guard finds merit to Lieutenant Bromley's request, the certifying officer expressed concern regarding the administrative problems which would result. He argues that the service would have to maintain two or more separate pay accounts for members in Lieutenant Bromley's position and would have to move their pay from one grade to another whenever longevity, career sea pay, basic allowance for quarters (BAQ)/variable housing allowance (VHA), and other entitlements cause pay variations. In relation to Lieutenant Bromley's case, four questions are submitted:

- "1. Is a member on saved pay entitled to longevity increases of the saved grade?
- "2. Is a member not on saved pay entitled to saved pay when a longevity increase makes the entitlements of the old grade more advantageous?
- "3. If the answer to question 2 is yes, does the same apply to other pay and allowances such as Career Sea Pay and BAQ/VHA?
- "4. Do the answers apply equally whether the previous grade was Warrant Officer or enlisted and whether the grade was temporary or permanent?"

For the reasons below, the answer to all four questions is yes.

#### ANALYSIS AND CONCLUSION

Lieutenant Bromley was appointed a commissioned officer under 14 U.S.C. § 214. Subsection 214(d) provides in part that:

". . . A person who is appointed under this section may not suffer any reduction in the rate of pay and allowances to which he would have been entitled had he remained in his former grade and continued to receive increases in pay and allowances authorized for that grade."

Additionally, since the Coast Guard is an armed force and a uniformed service the provisions of title 37, United States Code are also applicable to Lieutenant Bromley. See 37 U.S.C. § 101(3) and (4).

Section 907(b) of title 37, U.S. Code provides that:

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

Subsection 907(c)(2) provides that the rates of pay and allowances for the grade an officer formerly held: ". . . are those to which the officer would have been entitled had he remained in that grade and continued to receive the increases in pay and allowances of that grade." This language was part of legislation enacted in 1980 amending 14 U.S.C. § 214(d) and 37 U.S.C. § 907. See Pub. L. No. 96-376, Oct. 3, 1980, 94 Stat. 1509, and Pub. L. No. 96-343, Sept. 8, 1980, 94 Stat. 1126.

On the basis of the language of these two statutes, it seems clear that the phrase "continued to receive the increases" would include both longevity increases and periodic pay raises applicable to the former grade. Question 1 is therefore answered yes.

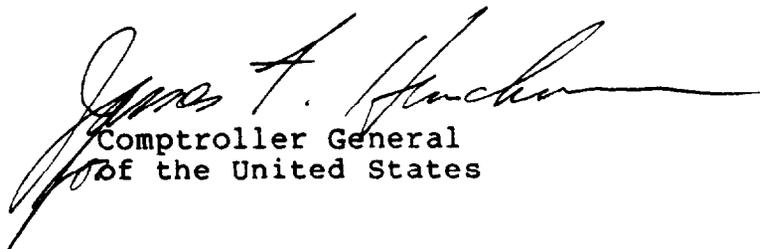
Section 907 of title 37 provides that an officer shall be paid the greater of either the pay and allowances as a commissioned officer or the pay and allowances of his former grade. This is a statutory mandate to pay the greater of the entitlements. Accordingly, with respect to question 2, an officer who did not initially receive saved pay because at the time of his appointment the pay and allowances of his commissioned grade were greater than those of his former grade is entitled to the saved pay for his former grade when the pay and allowances of that grade become greater.

Concerning question 3, 37 U.S.C. § 907(c) provides that the pay and allowances of a grade formerly held by an officer include special and incentive pay and allowances. These would include Career Sea Pay and Basic Allowance for Quarters and Variable Housing Allowance. However, these special and incentive pay and allowances may be considered only so long as the officer continues to perform the duty for which the pay and allowances are authorized. 37 U.S.C. § 907(d).

Concerning question 4, 14 U.S.C. § 214(a) provides that the President may appoint temporary officers from among the enlisted members of the Coast Guard. Section 214(d) is applicable to these members as well as to warrant officers. Additionally, 37 U.S.C. § 907(a), which is also applicable to the Coast Guard, has provisions applicable to enlisted members appointed as temporary officers similar to the provisions applicable to warrant officers.

The second issue presented by question 4 is whether Lieutenant Bromley is entitled to saved pay at his last pay grade (W4) or only at his last permanent pay grade (W3). Prior to 1974, 14 U.S.C. § 214(d) read: "A person who is appointed under this section may not suffer any reduction in the pay and allowances to which he was entitled because of his permanent status at the time of his temporary appointment under this section." This language was amended in 1974 by adding the words: "or any reduction in pay and allowances to which he was entitled under a prior temporary appointment in a lower grade." See Pub. L. No. 93-283, May 14, 1974, 88 Stat. 139. Under the words of the 1974 amendment, Lieutenant Bromley would have been entitled to saved pay at the temporary grade of W4.

The 1980 amendments to the law did not include the language specifying entitlement at the temporary grade level, but significantly, did not reinstate the pre-1974 language specifying entitlement only at the last permanent grade. Instead, the current language only specifies entitlement to saved pay at the "former grade." Pub. L. No. 96-376, Oct. 3, 1980, 94 Stat. 1509. Identical language is contained in 37 U.S.C. § 907. It is our view that the language "former grade" refers to grade for which pay and allowances were being received at the time of appointment as a commissioned officer. In Lieutenant Bromley's case this would be the temporary grade of W4.

  
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