



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Colonel William C. Doerner, USMC (Retired)

File: B-234888

Date: July 16, 1990

DIGEST

A Marine Corps Colonel who retired but was immediately recalled to active duty for 1 year is not entitled to have his retired pay recomputed under 10 U.S.C. § 1402(a) to reflect a basic pay rate that became effective during that 1-year period, because the statute requires that a member in such circumstances receive the higher rate of basic pay for a continuous period of 2 years in order to have his retired pay recomputed to reflect the higher rate.

DECISION

This is in response to a request from the Marine Corps Finance Center for an advance decision regarding the computation of the retired pay of Colonel William C. Doerner, USMC, Retired.^{1/} For the reasons presented below, we conclude that Colonel Doerner's retired pay currently is being computed at the correct rate.

On July 1, 1986, Colonel Doerner was mandatorily released from active duty and transferred to the Retired List with more than 31 years of active service. At the same time, he received orders recalling him to active duty in a retired recall status on July 1, 1986, for a period of 1 year.

The Marine Corps computed Colonel Doerner's retired pay based on the basic pay rates that became effective October 1, 1985, which were the rates in effect when Colonel Doerner was placed on the Retired List. Because he was recalled to active duty without a break in service, Colonel Doerner maintains that he is entitled to have his retired pay computed under the rates that became effective January 1, 1987, that is, the rates in effect when his recall ended.

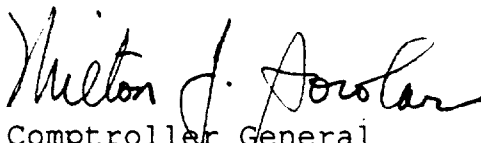
^{1/} The request has been assigned control number DO-MC-1487 by the Department of Defense Military Pay and Allowance Committee.

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The provisions of law governing the recomputation of retired pay to reflect active duty after retirement are at 10 U.S.C. § 1402. As we explained in Colonel Wayne R. Ullisnik, USA (Retired), B-236552, Dec. 18, 1989, under 10 U.S.C. § 1402(a) if a recalled member has not served for a continuous period of 2 years at the rate of pay in effect when his recall ends, the member is not entitled to have retired pay recomputed at that rate. Instead, if he has not served at that pay rate for 2 years, his retired pay is computed at the immediately preceding rate. In Colonel Doerner's case, that means that because he did not serve under the January 1, 1987, rate for 2 years, his retirement should be based on the rates of pay that became effective October 1, 1985.

Colonel Doerner suggests that our decision in 47 Comp. Gen. 696 (1968), in which we discussed the retired pay of an Army Chief of Staff, supports recalculation. There, we noted that if the Chief of Staff retired on July 1, 1968, and was retained on active duty for even 1 day, his retired pay would be recomputed under 10 U.S.C. § 1402(a) based on the rates effective upon his ultimate release from duty (that is, irrespective of the time actually served under those rates). That decision does not apply to Colonel Doerner's situation, however. The reason is that at the time of that decision footnote 1 to 10 U.S.C. § 3991 specified that a Chief of Staff's retired pay would be computed "at the highest rates applicable to him while he served in that office."

In sum, Colonel Doerner's retired pay should be computed at the October 1985 rate.

for 
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