



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Captain Milton D. Beach, USN, Retired -
Dual Compensation

File: B-238189

Date: March 22, 1990

DIGEST

A bonus received by a retired member employed in a civilian position with the government should not be considered in computing the reduction in retired pay required by 5 U.S.C. § 5532(c) when an individual's combined retired pay and pay for the civilian position exceeds level V of the Executive Schedule as a result of the bonus, since the statute refers to the basic pay of the position.

DECISION

Captain Milton D. Beach, USN, retired, has submitted a claim for amounts of retired pay withheld under the provisions of 5 U.S.C. § 5532(c) for periods when his retired pay when combined with his pay for a civilian position with government exceeded the pay for level V of the Executive Schedule. For the following reasons, the claim is allowed.

BACKGROUND

Captain Beach is a retired regular Naval officer and is employed by the United States Senate. As such he is subject to the provisions of the Dual Compensation Act, 5 U.S.C. § 5532 which requires a reduction in the retired pay of regular retired officers who are employed in a civilian position with the government. It also requires an additional reduction in retired pay when an individual's annual retired pay as reduced combined with the pay of his civilian position exceeds level V of the Executive Schedule. This reduction is implemented on the basis of civilian pay periods.

Captain Beach's reduced retired pay when combined with his normal salary ordinarily does not exceed level V of the

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Executive Schedule. However, just prior to the end of the fiscal year in 1985 and 1988 the Senator who employed him awarded him a bonus. This bonus was paid in three installments at the end of the fiscal year and was added to his regular pay because the Senate Disbursing Office has no mechanism for paying bonuses other than to raise an individual's pay for a period of time and then reduce it to its previous level. This temporary increase caused Captain Beach's combined retired pay and civilian pay for each of the pay periods in which bonus payments were added to his salary to exceed the pay period rate for level V of the Executive Schedule. His retired pay was reduced so that the combined pays equaled level V. Captain Beach contends his pay in 1985 should not be reduced because his annual retired pay, his annual civilian pay, and his bonus, when totaled, do not equal the annual rate of pay for level V of the Executive Schedule. It is not clear why he did not contest the reduction in retired pay which occurred in 1988.

ANALYSIS AND CONCLUSION

Subsection 5532(c) of Title 5, U.S. Code provides that if a member or former member is receiving retired or retainer pay and is employed in a position the annual rate of basic pay for which, when combined with the member's annual rate of retired pay, exceeds the rate of basic pay of level V of the Executive Schedule, the member's retired pay will be reduced. The reduction is computed on a pay period basis. We have held that the term "pay period" as used in the law refers to the biweekly pay periods applicable to civilian employees of the government. See Lieutenant General Ernest Graves, Jr., USA (Retired), 61 Comp. Gen. 604 (1982).

It is suggested that the law was intended to be applied when an individual's yearly retired pay and yearly civilian salary exceed the yearly pay of level V of the Executive Schedule. We do not agree. The specific terms of the statute refer to a reduction in retired pay allocable to a pay period. In view of this, we can only conclude that Congress intended to apply the limitation on a pay period basis rather than an annual basis. See Lieutenant Colonel Robert C. McFarlane, USMC (Retired), 61 Comp. Gen. 221 (1982).

Notwithstanding the above, it is our view that the plain language of the statute requires that Captain Beach's claim be paid. The statute specifically refers to the "basic" pay of the civilian position. The payments received by Captain Beach in 1985 and 1988 were not basic pay but were bonuses. This is fully supported by a letter from the

Financial Clerk of the Senate. It is clear that the Congress intended only basic pay to be considered in applying the limitation. Accordingly, any amounts withheld from Captain Beach's retired pay in 1985 as well as those amounts withheld in 1988 in these circumstances should be refunded to him.

Milton J. Fowler

Acting Comptroller General
of the United States