



DEPARTMENT OF DEFENSE  
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# REDACTED COPY

**Matter of:** Entitlement to Longevity Pay Increases - Naval Aviation Cadets

**File:** Department of Defense General Counsel Opinion:  
DoD/GC #97-1

**Date:** February 28, 1997

## DECISION

The Commander, Training Air Wing FIVE, Naval Air Station Whiting Field, has requested a decision as to whether seven Naval Aviation Cadets (NAVCADs), who are receiving a "saved" pay rate under 37 U.S.C. § 201(c), are entitled to receive longevity pay increases because they have been in the NAVCAD program for more than 2 years. The request was submitted to the General Accounting Office (GAO) on December 28, 1995; however, as a result of the transfer of functions from GAO to the executive branch mandated by Public Law No. 104-316, and in accordance with subsequent delegations, GAO transferred the matter to this office for resolution. For the reasons set forth below, we conclude that the NAVCADs are not entitled to longevity pay increases.

## BACKGROUND

The NAVCAD program allows civilians and enlisted Navy members, upon successful completion of the program, to be appointed as ensigns in the Naval Reserve or second lieutenants in the Marine Corps Reserve, with a 3-year active duty commitment. (10 U.S.C. §§ 6911, 6913.) Section 201(c) of Title 37, United States Code, provide that "[u]nless entitled to the basic pay of a higher pay grade, an aviation cadet of the Navy, Air Force, Marine Corps, or Coast Guard is entitled to monthly basic pay at the lowest rate prescribed for pay grade E-4."

The individuals involved here were enlisted members who were entitled to basic pay at a rate higher than the lowest rate for an E-4 at the time they entered the NAVCAD program, and, if not in the program, they would normally be entitled to longevity pay increases every 2 years. The Commander of the Training Air Wing argues that since the individuals are receiving saved pay under the provisions of paragraph 020301 (formerly 10221) of the DoD Financial Management Regulation (DoD 7000.14-R), Volume 7A, they are entitled to receive their regular longevity pay increases. The position of the Defense Finance and Accounting Service (DFAS) is that such NAVCADs are not entitled to basic pay longevity



increases, because the statutory provisions establish a specific saved pay rate to which the members are entitled.

#### ANALYSIS

Prior to 1991, all NAVCADs were entitled to basic pay at the rate of 50 percent of the basic pay of officers in pay grade O-1 with 2 or fewer years of service. Section 605 of Public Law No. 102-190, December 5, 1991, amended 37 U.S.C. § 201(c) to provide the current pay structure, under which NAVCADs are entitled to pay based on the lowest rate for an E-4, unless they are otherwise entitled to the basic pay of a higher grade. The legislative history of the amendment indicates that it was intended to grant NAVCADs a pay increase by changing from 50 percent of the lowest O-1 pay, which is about the same as E-1 pay, to the lowest rate for an E-4, unless the member was already entitled to a higher rate of pay. (See H.R. Conf. Rep. No. 311, 102d Cong., 1st Sess. 548 (1991), reprinted in 1991 U.S.C.C.A.N. 918, 1104.)

Neither the statute nor the implementing DoD regulations specifically address the issue of longevity increases for those NAVCADs being paid under the saved pay provision, and the legislative history also offers no guidance in this matter. It appears clear, however, that NAVCADs who do not fall under the saved pay provision are not entitled to any longevity increases; in accordance with the specific statutory language, they receive pay at a set rate (the lowest E-4 pay rate) during the entire period they are in the program. In view of that fact, the most reasonable interpretation of the saved pay provision is that it also was intended to be a set rate for the duration of the member's time in the program.

The above interpretation is supported by the fact that 10 U.S.C. § 6911 states that the "grade of aviation cadets is a special enlisted grade in the naval service." Moreover, 37 U.S.C. § 201(e), which concerns computing basic pay based on pay grade and longevity, specifically states that the subsection does not apply to those members covered by section 201(c).

Finally, we find the argument of the Commander, Training Air Wing FIVE, that longevity increases are due under the saved pay provisions of DoDFMR 7A, paragraph 020301, to be unpersuasive. That paragraph, which implements 37 U.S.C. § 907, provides that an enlisted member who accepts an appointment as an officer may, following appointment, be paid the pay and allowance to which the member would be entitled if the member had remained in the last enlisted grade held before appointment as an officer and continued to receive increases in pay and allowances authorized for that grade, if such rate is greater than what the member would be entitled to as an officer. However, NAVCADs are not receiving saved pay as contemplated by that provision, since they have not yet been commissioned as officers during the period they are in the program. Therefore, the provisions of paragraph

020301 are not applicable to them, and we are not aware of any other saved pay provision that would authorize payment of longevity increases to the seven NAVCADs in question.

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