



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

09/642
31341

B-177023

September 26, 1973

The Honorable
The Secretary of Defense

BEST DOCUMENT AVAILABLE

Dear Mr. Secretary:

Our Field Operations Division has questioned the validity of payments of proficiency pay being made under 37 U.S.C. 307 to the Sergeant Major of the Army and the Chief Master Sergeant of the Air Force who, as you know, are the senior noncommissioned officers in those services. A review of the pay records for the occupants of these positions reveals that the following members, who served and are serving as Sergeant Major of the Army and Chief Master Sergeant of the Air Force, have received proficiency pay while so serving during the periods indicated and in the amounts shown:

Army

George W. Dunaway	9/1/68 - 9/30/70	\$750.00 (25 mos at \$30)
Silas L. Copeland	10/1/70 - 6/30/73	\$990.00 (33 mos at \$30)
Leon L. Danautreva	7/1/73 - Current (8/31/73)	\$100.00 (2 mos at \$50)

Air Force

Richard D. Kislring	1/1/72 - Current (8/31/73)	\$600.00 (20 mos at \$30)
---------------------	-------------------------------	---------------------------

As you also know, footnote 1 of section 1(1) of the act of December 16, 1967, Public Law 90-207, 81 Stat. 649, 650, effective October 1, 1967, amended 37 U.S.C. 203(a), to establish a special rate of pay for the Sergeant Major of the Army, Senior Enlisted Advisor of the Navy (now called Master Chief Petty Officer of the Navy), Chief Master Sergeant of the Air Force and Sergeant Major of the Marine Corps, each of whom is the senior noncommissioned officer in his respective service. Section 3 of the act of October 2, 1972, Public Law 92-455, 86 Stat. 761, established the same rate of pay for the Master Chief Petty Officer of the Coast Guard, the senior noncommissioned officer of that service.

PUBLISHED DECISION
53 Comp. Gen. _____

719428

Prior to the enactment of Public Law 90-207, members serving as the senior noncommissioned officers in the Army, Navy, Air Force and Marine Corps were paid basic pay at the rate of E-9 with appropriate years of service, plus proficiency pay at the rate of \$150 per month. The special pay rate established by Public Law 90-207 for such senior noncommissioned officers was \$844.20, regardless of cumulative years of service, which amount was exactly \$150 more than the monthly rates for grade E-9 with over 26 or over 30 years of service in effect at that time (\$694.20). Subsequent military pay increases have increased that special pay rate to its current level, \$1,355.40, or \$240.30 more than the highest current pay rate for grade E-9 (\$1,115.10).

The legislative history of Public Law 90-207 clearly shows that it was intended that by establishing the special basic pay rate for the senior noncommissioned officer in each service equal to the highest E-9 rate plus \$150 proficiency pay, such noncommissioned officers would no longer be awarded additional proficiency pay. In this regard, Senate Report No. 808, 90th Congress, 1st session, page 8, states in pertinent part as follows regarding H.R. 13510, which became Public Law 90-207:

"At the present time in the Army, Navy, Air Force, and Marine Corps there is one enlisted man who has been designated as the senior noncommissioned officer in each of the services. This noncommissioned officer is the principal enlisted adviser to the Chiefs of Staff of the Army and Air Force, Chief of Naval Operations, and the Commandant of the Marine Corps. For many years the Marine Corps has designated such a position. It is relatively new, however, in the other services.

"Under the existing arrangement, each senior noncommissioned officer receives the basic pay of an E-9 with his years of service together with proficiency pay of \$150 per month.

"Under the bill a special pay rate is proposed of \$844.20 per month. This enlisted person will receive this pay while serving in this position regardless of his years of service for pay purposes. The proficiency pay of \$150 per month which has been received as an interim measure will be rescinded. As a result, the

bill will not cause any increase in total active duty compensation for the senior noncommissioned officer."
(Underscoring supplied.)

See also in this regard House Report No. 787, 90th Congress, 1st session, page 8.

Similar rationale was used in support of Public Law 92-455 authorizing the special pay rate for the Master Chief Petty Officer of the Coast Guard. See House Report No. 92-1278, 92d Congress, 2d session, page 2.

It appears that with enactment of Public Law 90-207, effective October 1, 1967, the pay of the senior noncommissioned officers of the Army, Navy, Air Force and Marine Corps was adjusted to reflect the new special pay rate and to discontinue the \$150 per month proficiency pay, in accordance with the intent of that legislation. However, the Army (beginning in September 1968) and the Air Force (beginning in January 1972) began paying superior performance proficiency pay at the rate of \$30 per month to the Sergeant Major of the Army and the Chief Master Sergeant of the Air Force in addition to the special rate of basic pay applicable to those positions. Beginning in July 1973 the Army increased the rate of proficiency pay being paid to the Sergeant Major of the Army to \$50 per month. The Air Force rate remains at \$30 per month. We have been informed such proficiency pay is not being paid to the Master Chief Petty Officer of the Navy, the Sergeant Major of the Marine Corps or the Master Chief Petty Officer of the Coast Guard.

We also note that paragraph IV.D.1.a(2) of Department of Defense Directive 1304.14 specifically provides that superior performance proficiency pay will be paid on a "competitive basis." Since there is only one senior noncommissioned officer position in each service, it is difficult to see how a competitive basis can be established for award of proficiency pay to a member serving in such a position.

Accordingly, we find no proper basis for the payment of proficiency pay to any of the senior noncommissioned officers of the armed services entitled to the special rate of basic pay applicable to those positions under 37 U.S.C. 203(a). Payments of such proficiency pay now being made to the Sergeant Major of the Army and the Chief Master Sergeant of the Air Force should be discontinued immediately.

D-177023

BEST DOCUMENT AVAILABLE

Since it appears that prior payments of proficiency pay to the individuals concerned were based on a misinterpretation of the law, no action need be taken to collect the improper payments if they were correct in other respects. Moreover, these payments presumably were accepted in good faith by the members and, in any event, they apparently would be proper for waiver under the provisions of 10 U.S.C. 2774.

Sincerely yours,

R.F.KELLEY

Deputy Comptroller General
of the United States