



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Commander John D. Adams, USCG, Retired

File: B-257717

Date: January 25, 1995

DIGEST

Retired member employed by Coast Guard Exchange Service, a nonappropriated fund instrumentality under the jurisdiction of the armed forces, holds a "position" under 5 U.S.C. § 5531 and is subject to the dual compensation restrictions of 5 U.S.C. § 5532 notwithstanding the definition of "civil service" in 5 U.S.C. § 2101(1).

DECISION

The issue presented in this case is whether the military retired pay of Commander John D. Adams, USCG (Retired), is subject to reduction under the dual compensation restrictions of 5 U.S.C. § 5532 on account of his civilian employment with the Coast Guard Exchange System, a nonappropriated fund activity. We find that his military retired pay is subject to the restrictions applicable to regular retired officer who hold civilian "positions" as defined by 5 U.S.C. § 5531.

Commander Adams contends that under the definition of "civil service" contained in 5 U.S.C. § 2101(1), which defines "civil service" for the purpose of title 5, he does not hold an appointive federal position since he is not a member of the Civil Service and therefore, should not be subject to the dual compensation restrictions of 5 U.S.C. § 5532.

Section 5532 places limits on the amount of retired pay that a retired member of the uniformed services may receive if he is employed in a civilian "position" with the federal government. Section 5531 defines "position" for the purposes of section 5532 as a "civilian office or position . . . appointive or elective, in the legislative, executive or judicial branch of the government of the United States (including a government corporation and a nonappropriated fund instrumentality under the jurisdiction of the armed forces). . ."

While 5 U.S.C. § 2101(1) defines "civil service" for general purposes of title 5, section 5531 takes precedence and specifically controls the application of section 5532. Commander Adams' position with the Coast Guard Exchange System, a nonappropriated

fund instrumentality under the jurisdiction of an armed force, is therefore within the reach of section 5532 and he is subject to the dual compensation restrictions contained therein.

Such result is consistent with our prior decisions in the area since the passage of Public Law 88-448, 78 Stat. 485, August 19, 1964 (previously codified at 5 U.S.C. § 3101), which added the parenthetical phrase concerning government corporations and nonappropriated fund instrumentalities. See 45 Comp. Gen. (1965); 50 Comp. Gen. 604 (1971); Fort Benjamin Harrison-Dual Compensation Act-Appropriated and Nonappropriated Fund Positions, B-208336, Apr. 22, 1983, and Major William R. Minton, et al., USAF (Retired), B-237117, July 12, 1991.

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