

SEC. 651. EXCEPTION TO HIGH-36 MONTH RETIRED PAY COMPUTATION FOR MEMBERS RETIRED FOLLOWING A DISCIPLINARY REDUCTION IN GRADE.

Section 1407 of title 10, United States Code, is amended--

(1) in subsection (b), by striking 'The retired pay base' and inserting 'Except as provided in subsection (f), the retired pay base'; and

(2) by adding at the end the following new subsection:

(f) EXCEPTION FOR ENLISTED MEMBERS REDUCED IN GRADE AND OFFICERS WHO DO NOT SERVE SATISFACTORILY IN HIGHEST GRADE HELD-

(1) COMPUTATION BASED ON PRE-HIGH-THREE RULES- In the case of a member or former member described in paragraph (2), the retired pay base or retainer pay base is determined under section 1406 of this title in the same manner as if the member or former member first became a member of a uniformed service before September 8, 1980.

(2) AFFECTED MEMBERS- A member or former member referred to in paragraph (1) is a member or former member who by reason of conduct occurring after the date of the enactment of this subsection--

(A) in the case of a member retired in an enlisted grade or transferred to the Fleet Reserve or Fleet Marine Corps Reserve, was at any time reduced in grade as the result of a court-martial sentence, nonjudicial punishment, or an administrative action, unless the member was subsequently promoted to a higher enlisted grade or appointed to a commissioned or warrant grade; and

(B) in the case of an officer, is retired in a grade lower than the highest grade in which served by reason of denial of a determination or certification under section 1370 of this title that the officer served on active duty satisfactorily in that grade.

(3) SPECIAL RULE FOR ENLISTED MEMBERS- In the case of a member who retires within three years after having been reduced in grade as described in paragraph (2)(A), who retires in an enlisted grade that is lower than the grade from which reduced, and who would be subject to paragraph (1) but for a subsequent promotion to a higher enlisted grade or a subsequent appointment to a warrant or commissioned grade, the rates of basic pay used in the computation of the member's high-36 average for the period of the member's service in a grade higher than the

grade in which retired shall be the rates of pay that would apply if the member had been serving for that period in the grade in which retired.'.