

DECISION

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

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FILE: B-181711

DATE: JUN 4 1975

**MATTER OF: Department of Defense Military Pay and
Allowance Committee Action No. 506 -
Variable Reenlistment Bonus**

DIGEST: Service member who reenlisted or extended his then current enlistment before June 1, 1974, thereby qualifying for a variable reenlistment bonus (VRB) under 37 U.S.C. 308(g) (1970), is not entitled to receive payment for an additional VRB when he subsequently extends or further extends that reenlistment on or after June 1, 1974, since Public Law 93-277, 88 Stat. 119, repealed the VRB provisions effective that date and since the service member had not actually extended or further extended that enlistment before the law was repealed, he acquired no vested right to payment of an additional VRB thereafter.

This action is in response to a letter dated June 25, 1974, from the Assistant Secretary of Defense (Comptroller) requesting an advance decision on certain questions relating to payments of a variable reenlistment bonus (VRB) under the provisions of 37 U.S.C. 308(g) (which was repealed by Public Law 93-277) upon subsequent extensions of enlistments after June 1, 1974, in the circumstances discussed in Department of Defense Military Pay and Allowance Committee Action No. 506, enclosed with the request.

The questions are:

"1. Is a member, serving under a two year extension of enlistment for which a variable reenlistment bonus (VRB) was paid, entitled to an additional VRB for a second or subsequent extension of that enlistment executed on or after 1 June 1974?

"2. Is a member, otherwise qualified for a VRB, who is serving under a 21 month extension of enlistment on 31 May 1974, entitled to a VRB if after that date, he again executes an agreement to extend his enlistment for at least a 3 month period?"

B-181711

The brief discussion contained in the Committee Action points out that, normally, entitlement to a VRB for a second or subsequent extension of enlistment is based on the conditions which existed at the time a member commenced serving on his first extension of enlistment. However, in view of the repeal of 37 U.S.C. 308(g), effective June 1, 1974, doubt is expressed as to whether VRB entitlement exists for additional extensions which are executed on or after that date.

The statutory provisions regarding a service member's entitlement to a VRB, formerly found in 37 U.S.C. 308(g) (1970), were repealed on June 1, 1974, when Public Law 93-277, approved May 10, 1974, 88 Stat. 119, and entitled the Armed Forces Enlisted Personnel Bonus Revision Act of 1974, amended section 308 of title 37 of the Code to replace both the VRB and the regular reenlistment bonus with a selective reenlistment bonus. Although section 3 of Public Law 93-277 contained a specific savings provision for the continuation of payment of the regular reenlistment bonus previously authorized to all reenlistees in nonselective reenlistment bonus specialities who were on active duty on June 1, 1974, Public Law 93-277 contained no similar savings provisions for the VRB. In this regard, the legislative history of Public Law 93-277 shows that Congress intended the VRB to expire with the passage of Public Law 93-277 and that the selective reenlistment bonus would take the place of both regular and variable reenlistment bonuses. See H. Rep. No. 93-857, p. 3 (1974).

Although it is clear that the VRB entitlement was superseded as of June 1, 1974, certain prior decisions of this Office with respect to nature of and payment of a VRB apparently have given rise to the before-quoted questions.

In 45 Comp. Gen. 379 (1966), we considered the question as to whether certain events which occurred after a service member established his right to a VRB, would preclude the member from receiving the payments for which he initially established his eligibility. In that decision, we took the position that in situations involving the reenlistment of a member who was otherwise qualified for a VRB, the right to receive payment of that bonus vests upon completion of the reenlistment procedure and although VRB was paid in installments, the entitlement to the total bonus was considered to vest upon such reenlistment.

B-181711

The decision 46 Comp. Gen. 322 (1966) involved the issue of whether an additional VRB could be paid upon a service member's second extension of his first reenlistment even if the service member's eligibility for a VRB at the time of the second extension had been changed. The decision held that, since all extensions of enlistment were to be considered as one continuous extension, an additional VRB could be paid upon the member actually executing the further extension because the right to a VRB was deemed to "vest" when established at the time of the first reenlistment or extension. The individual's right to receive payment of the additional VRB based upon a further extension of his service obligation was, however, contingent upon him actually obligating himself to that further period of service by virtue of such extension. In such cases the period of extension was considered as being an extension of the first reenlistment, and thus covered by VRB at the rate applicable to the first extension. It is important to note, however, that in both the decisions the service member had done everything necessary to be entitled to the VRB--either reenlisted or extended the reenlistment--which is the operative event from which entitlement to payment of the VRB was measured.

In the questions presented in the Committee Action, it was indicated that the service member had not completed all steps necessary in order to be entitled to payment of an additional VRB under 37 U.S.C. 308(g) (1970) before that law was repealed because he had not actually extended or further extended his reenlistment. It is our view that since the right to an additional VRB in those questions did not fully vest prior to June 1, 1974, no payment may be made. The questions submitted are answered accordingly.

R.F. KELLER

Deputy

Comptroller General
of the United States