

DECISION



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

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FILE: B-187078

DATE: MAR 28 1977

MATTER OF: Department of Defense Military Pay
and Allowance Committee Action
No. 528

DIGEST: Remission and cancellation of debts of
enlisted members of the armed forces
specifically authorized under
10 U.S.C. 4837(d) (Army), 6161 (Navy),
and 9837(d) (Air Force), may not be
extended to cover debts of members of
Reserve components not on active duty.
Cf. 39 Comp. Gen. 415 (1959)

This action is in response to a letter dated July 22, 1976, from the Assistant Secretary of Defense (Comptroller) requesting an advance decision as to whether the debt cancellation and remission authority in 10 U.S.C. 4837(d), 6161, and 9837(d), is applicable to members of Reserve components when they are performing other than extended active duty. The specific questions and discussion are contained in Department of Defense Military Pay and Allowance Committee Action No. 528, enclosed with the letter.

The questions presented in the Committee Action are:

"Are the provisions of sections 4837(d), 6161 and 9837(d), Title 10, United States Code, applicable to members of Reserve components under the following circumstances:

- a. When reservists (Army, Navy, Air Force or Marine Corps) are performing active duty for training (including annual training duty) with or without pay?
- b. When reservists (Army, Navy, Air Force or Marine Corps) are performing inactive duty training with or without pay?
- c. When National Guardsmen are performing duty under 32 U.S.C. 502 through 505?"

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As background, the discussion in the Committee Action acknowledges that "on the surface it appears that the questions being raised were answered in the negative by" the decision in 39 Comp. Gen. 415 (1959). The discussion indicated that in reviewing the history and congressional intent of the original legislation in 1928 providing for such remission of indebtednesses it was concluded in that decision that remission could not be applied to retired members or those who were discharged or transferred to the Reserves since the purpose of the legislation was to alleviate a serious morale problem of indebted enlisted men on active duty.

However, it is argued in the discussion that the presence of an active duty benefit that is not available to members of the Reserve components who are not on active duty is incompatible with the "Total Forces Concept". In this connection, it is pointed out that 10 U.S.C. 2774 and 32 U.S.C. 716, authorizing waiver of indebtedness arising out of erroneous payments of pay and certain allowances, cover members of Reserve components, regardless of status, as well as retired and former members. It is suggested that this creates an inconsistency, that is, if the indebtedness results from an erroneous payment of pay or certain allowances, a member's status at the time of application for relief is irrelevant, but for administratively ascertained indebtedness, such as amounts due for Government property lost or destroyed, members who are not on active duty are not permitted to apply for relief.

Because the "type of logic" that was presented to the Congress in 1928 in order to obtain Secretarial authority to cancel or remit the debts of enlisted members on active duty is believed to be equally applicable today in the case of enlisted members of Reserve components who perform inactive duty training and active duty training, it is argued that, notwithstanding the absence of any language in the applicable statutes and their legislative histories reflecting a specific intent to extend the remission authority to members of the Reserve components, the Secretaries concerned are authorized to cancel or remit the debts of enlisted members of the Reserve components who perform inactive duty training and active duty training.

In decision 39 Comp. Gen. 415, supra, we dealt with questions relating to remission of an enlisted member's indebtedness after

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his retirement, discharge, or transfer to the Reserve. In substance, we held therein that the term "discharge" as used in 10 U.S.C. 4837(d) and 9837(d), which authorizes the remission or cancellation of enlisted member's debts remaining unpaid at time of discharge, refers to the actual termination of a member's status on the active list and not to any formal document received by a member upon release from active duty so as to bring members no longer on the active list within purview of the law. We concluded therein that debts of enlisted members which accrued during active duty or subsequent to retirement could not be remitted or canceled under 10 U.S.C. 4837(d) and 9837(d) after the enlisted member had been discharged, retired or transferred to the Reserves.

The basic statute authorizing the remission and cancellation of debts due the United States by Army enlisted men upon honorable discharge was the act of May 22, 1928, 45 Stat. 698, 10 U.S.C. 875a. That act was amended by the act of June 26, 1934, 48 Stat. 1222, now codified in 10 U.S.C. 4837(Army) and 10 U.S.C. 9837(Air Force), so as to permit debt remission or cancellation either at the time of discharge or prior thereto. The legislative history of the subject remission statutes clearly showed that the purpose of the legislation was to relieve enlisted men while on active duty of the burden of repaying large sums of money in satisfaction of debts, thereby boosting the morale of indebted enlisted men, stopping desertions, and encouraging reenlistments of those men relieved.

The similar remission authority was extended to the Navy by Public Law 86-511, approved June 11, 1960, 74 Stat. 207, 10 U.S.C. 6161. The three sections of law are similar in wording, the one applicable to the Navy, 10 U.S.C. 6161, provides:

"If he considers it in the best interest of the United States, the Secretary of the Navy may have remitted or canceled any part of an enlisted member's indebtedness to the United States or any of its instrumentalities remaining unpaid before, or at the time of, that member's honorable discharge."

It is noted that the foregoing 1960 statutory remission authority incorporates without substantive change, the language granting remission authority to the Secretaries of the Army and

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Air Force, which was considered in our 1959 decision--39 Comp. Gen. 415.

In consonance with the foregoing remission statutes and the conclusions in 39 Comp. Gen. 415, paragraph 70721 of the Department of Defense Military Pay and Allowances Entitlements Manual (DODPM) states directly to the point that an enlisted member on active duty or his commander may apply for remission of the enlisted member's indebtedness to the United States, but that the debt may not be remitted or canceled after the member is discharged, retired or released from active duty.

In view of the above we conclude that the holding in 39 Comp. Gen. 415, supra, is still for application and that the remission authority may not properly be extended to cover the members of the Reserve components not on active duty in the absence of authorizing legislation. Your questions are answered in the negative.

R. F. KELLER

Deputy Comptroller General
of the United States

MILITARY PERSONNEL
Depts
Remission
Reservists, etc.

MILITARY PERSONNEL
Depts
Remission
After retirement, etc.

MILITARY PERSONNEL
Depts
Remission
Authority