

DECISION

C. Holl
PLM²
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

\$352

FILE: B-192220

DATE: November 17, 1978

MATTER OF: Readjustment Pay Computation

DIGEST: An Air Force Reserve officer may not be paid readjustment pay computed on the basis of the more favorable formula provided in 10 U.S.C. 687 (1976) on the basis that he was separated for "homosexual tendencies" and not "substandard duty performance" (which requires computation on a less favorable formula), when the Air Force records show the authority for his separation as a regulation providing for separation for substandard duty performance. Separation from the Air Force and the reasons therefor are within the jurisdiction of the Air Force. If the officer believes the authority given for his separation is erroneous, he may seek to have his record corrected by the Air Force under 10 U.S.C. 1552 (1976).

This decision is in response to a request from Captain O. C. Seever, USAF, Accounting and Finance Officer, Little Rock Air Force Base, Arkansas, concerning the propriety of making payment on a voucher in the amount of \$4,969.92 to a former Air Force Reserve officer, for additional readjustment pay. The request has been assigned submission No. DO-AF-1296 by the Department of Defense Military Pay and Allowance Committee.

Incident to his discharge from the Air Force the member was paid readjustment pay computed by multiplying his years of service by one-half month's basic pay. He claims additional readjustment pay saying that he is entitled to such pay computed based on two months' basic pay times his years of service.

Readjustment pay is authorized by 10 U.S.C. 687 (1976), which provides in pertinent part:

"(a) Except for members covered by subsection (b), a member of a reserve component * * * who is released from active duty involuntarily * * * and who has completed, immediately before his release, at least five

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years of continuous active duty, is entitled to a readjustment payment computed by multiplying his years of active service * * * but not more than eighteen, by two months' basic pay of the grade in which he is serving at the time of his release. However, a member who is released from active duty because his performance of duty has fallen below standards prescribed by the Secretary concerned, or because his retention on active duty is not clearly consistent with the interests of national security, is entitled to a readjustment payment computed on the basis of one-half of one month's basic pay of the grade in which the member is serving at the time of his release from active duty. * * *

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"(b) Subsection (a) does not apply to a member who--

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"(3) under regulations to be prescribed by the Secretary of Defense * * * is released from active duty because of moral or professional dereliction;"

Information provided to us by the Accounting and Finance Officer and the Air Force Military Personnel Center, Randolph Air Force Base, Texas, shows that the member, was honorably discharged from the United States Air Force under the authority of Air Force Regulation (AFR) 36-12, paragraph 3-15 (July 15, 1977), which states:

"3-15. Discharge as a Result of Board Action. AFR 36-3 establishes procedures for the separation of officers who fail to meet the standards of performance prescribed by the Secretary of the Air Force. When the Secretary of the Air Force, based on the approved recommendations of a board of officers directs that an officer be discharged for any of the reasons outlined in that regulation, discharge

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is accomplished under this paragraph." (Emphasis added.)

AFR 36-3 provides administrative procedures for discharging members for substandard performance of duty.

Reportedly, the reason for the member's discharge was "homosexual tendencies," which is characterized by AFM 36-2, paragraph 4, as "incompatible with exemplary standards of personal conduct." AFR 36-2 provides administrative procedures for discharging Air Force officers because of unfitness or unacceptable conduct and for discharges which are in the interests of national security. It is noted that the member was not discharged for moral or professional dereliction as specified in 10 U.S.C. 687(b)(3). Thus, payment of readjustment pay is not precluded.

The member's readjustment pay was computed based on one-half of one month's basic pay pursuant to the second sentence of 10 U.S.C. 687(a) as implemented by Rule 2, Table 4-4-8 of the Department of Defense Military Pay and Allowances Entitlements Manual. Rule 2, Table 4-4-8, provides for such computation if separation is because performance of duty falls below standards prescribed by the Secretary of the department concerned. The table (note 2) further provides that the administrative regulations of the service concerned determines whether a separation falls within this category. The member challenges this computation, claiming that his separation was because of unfitness or unacceptable conduct, as provided for in AFR 36-2, and should not be considered within the category of "substandard duty performance." He therefore claims that the two months basic pay multiplier should have been used in computing his readjustment pay.

Under 10 U.S.C. 687(a) and implementing regulations readjustment pay must be computed based on one-half of one month's pay if the separation is because the member's performance of duty has fallen below standards "prescribed by the Secretary concerned." As is indicated previously, the authority shown, for the member's discharge in the records presented to us, is paragraph 3-15, AFR 36-12, which provides for separation for failure to meet "the standards of performance prescribed by the Secretary of the Air Force."

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Decisions to separate members of the Air Force and the basis for such separation, are matters primarily within the jurisdiction of the Air Force, and not our Office. Since the records provided us by the Air Force indicate that the authority for the member's discharge was paragraph 3-15, AFR 36-12, the Air Force's determination that his readjustment pay should be based on one-half month's basic pay appears correct. Accordingly, we may not authorize payment of readjustment pay to him at the higher rate.

If the member feels that the Air Force records concerning his separation are in error, he may apply to the Air Force Board for the Correction of Military Records to have the error corrected. See 10 U.S.C. 1552 (1976) and 32 C.F.R. 865.1 - 865.18 (1977). If a correction is made his claim may be given further consideration.

Deputy

R. Z. Kiser
Comptroller General
of the United States