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**DECISION**



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

**FILE:** B-201944

**DATE:** March 26, 1981

**MATTER OF:** Earl J. Miller

**DIGEST:** Discharge of an enlisted Navy member in 1967 terminated his entitlement to military pay and allowances. Therefore, the upgrading of his discharge from less than honorable to under honorable conditions without any change in the fact that he was discharged in 1967 gives him no entitlement to pay and allowances for any period after the original discharge. To be entitled to backpay upon upgrading of a discharge, the service member's records must reflect not only an upgrading of the discharge but also a voiding of the original discharge and determination that he remained on active duty.

Mr. Earl J. Miller appeals our Claims Group's denial of his claim for backpay and certain other monetary benefits he seeks incident to the upgrading of his discharge from the Navy. As will be explained, we affirm the denial by the Claims Group.

On May 16, 1967, Mr. Miller, then an enlisted member of the Navy, was discharged under less than honorable conditions. In 1977 he applied for and received an upgrading of his discharge under the Department of Defense Discharge Review Program (special). His records were corrected to reflect a discharge under honorable conditions. However, no change was made in the fact that he was discharged on May 16, 1967.

Because of the upgrading of his discharge, Mr. Miller seeks backpay, including all pay and allowances he would have received had he remained in the Navy, and other compensation for the embarrassment and lack of vocational opportunity he allegedly sustained in civilian life. He seeks this recovery from the date of his initial discharge in 1967 until the present.

Concerning the claim for backpay, the upgrading of Mr. Miller's discharge does not constitute a basis for authorizing payment. An enlisted member's discharge terminates any contractual relationship with the Government

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B-201944

with regard to entitlement to pay and allowances. A subsequent change in the character of the discharge does not render the original discharge null and void but merely results in a correction of the member's records to reflect the change. See Goldstein v. United States, 131 Ct. Cl. 228 (1955), cert. denied, 350 U.S. 888 (1955); 43 Comp. Gen. 115 (1963); and B-193417, February 16, 1979.

For an enlisted member to receive backpay, it is not merely the character of the discharge which must be changed but also the original discharge must be deemed illegal. See generally B-193635, January 17, 1979. The case record reveals that the correction of Mr. Miller's record did not result in a change in his discharge date nor in a voiding of his discharge. Therefore, we must conclude that Mr. Miller was lawfully discharged as of May 16, 1967. Since his entitlement to pay ceased upon his discharge, he has no entitlement to backpay.

While the upgrading of a discharge does not entitle a member to backpay, it may entitle him to certain Veterans' Administration benefits. However, we have no authority to determine entitlement to those benefits. 38 U.S.C. § 211(a). Mr. Miller should contact the Veterans' Administration, which has exclusive jurisdiction over those matters, to determine whether he may be entitled to any veterans' benefits.

As regards Mr. Miller's claim for damages for embarrassment and lack of vocational opportunity, there is no legal authority under which we could authorize payment of such damages in a situation of this type. It must be remembered that the upgrading of his discharge did not alter the legality of his original discharge. Indeed, even if his original discharge were deemed erroneous, there is no authority for us to reimburse a member for these damages. See B-195558, December 14, 1979.

Accordingly, the action of the Claims Group is affirmed.

*Milton J. Aroslan*

Acting Comptroller General  
of the United States