

DECISION



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

FILE: B-207041

DATE: September 8, 1982

MATTER OF: John L. Bond

- DIGEST:**
1. A Marine Corps member's discharge absolutely terminates his entitlement to military pay and allowances, and a subsequent upgrading of the character of the discharge does not change the date of the former member's separation from service, nor does it create any right to military pay for periods after the date of discharge; therefore, a former Marine Corps member given a bad conduct discharge on September 7, 1956, gained no entitlement to active duty pay for periods after that date as a result of action taken in 1974 to upgrade the discharge from bad conduct to general (honorable conditions).
 2. Claims for veterans benefits which may arise as the result of an administrative upgrade of a former Marine Corps member's discharge from bad conduct to general (honorable conditions) are within the exclusive jurisdiction of the Veterans Administration. 38 U.S.C. 211(a) (1976).

Mr. John L. Bond, a former member of the United States Marine Corps, requests reconsideration of our Claims Division's December 19, 1977 denial of his claims for additional amounts believed due by reason of a correction of his military records under 10 U.S.C. 1552 to show that on September 7, 1956, he received a general discharge under honorable conditions rather than a bad conduct discharge. He claims all military pay and allowances, as well as payment for accrued leave, through his full term of enlistment; restoration of all fines imposed by court-martial; mustering-out pay; retroactive

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veterans benefits; disability compensation; actual and punitive damages for his allegedly improper courts-martial and subsequent incarceration; and accrued interest payments on all amounts due.

In light of the facts presented and the applicable provisions of law, we sustain the denial of Mr. Bond's claims.

On October 23, 1974, the Board for Correction of Naval Records reviewed the records of Mr. Bond, which showed that he had been sentenced by court-martial on May 3, 1956, and supplemental special court-martial on June 15, 1956, to a bad conduct discharge. The Board determined that his record should be corrected to show that on September 7, 1956, he was issued a general discharge by reason of unfitness instead of the bad conduct discharge actually issued on that date. No other changes were made. In particular, the Board took no action to expunge the courts-martial from his records, to change the date of his discharge, or to allow him the military pay and allowances he might have received if he had completed his term of enlistment.

Based upon this limited change in his records, our Claims Division determined that Mr. Bond had become entitled to a lump-sum military leave settlement in the net amount of \$5.60 (\$6.60 less \$1 for Federal withholding tax). Payment for this leave settlement by the Marine Corps Finance Center was authorized, but he refused to accept that payment because he felt the amount was inadequate. More recently, he requested a review of our Claims Division's determination in the matter.

It is well established that an enlisted member's discharge terminates his entitlement to military pay and allowances. A subsequent change in the character of the discharge has no bearing on the fact of separation, and the former member does not become entitled to pay and allowances for the unexpired portion of his enlistment or term of service. Goldstein v. United States, 131 Ct. Cl. 228 (1955), cert. denied, 350 U.S. 888 (1955); 38 Comp. Gen.

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523, 525 (1959); 43 Comp. Gen. 115 (1963); and Matter of Romans, B-189212, July 5, 1977. In cases where the record is amended solely to show an upgrade in the character of discharge to honorable the former service member is entitled only to the benefits he would have received had the initial discharge been under honorable conditions. Carter v. United States, 206 Ct. Cl. 61 (1975); Matter of Jones, B-193635, January 17, 1979. Hence, in the present case Mr. Bond gained no entitlement to military backpay and allowances for the unexpired term of his enlistment as the result of the upgrading of his discharge.

Mr. Bond has not furnished any information or documentary evidence to prove that he is entitled to any additional payment for unused leave which may have accrued to his credit prior to the date of his discharge in 1956. The burden of proof as to the existence and nonpayment of a valid claim against the Federal Government is on the person asserting the claim. Compare Matter of Toth, B-193417, February 16, 1979. We therefore conclude that he is not entitled to a lump-sum leave settlement as the result of the change in his discharge in any amount larger than that previously tendered to him.

Since the correction of Mr. Bond's records made no reference to changing the results of his courts-martial except to upgrade the character of his discharge, restoration of any fines imposed by sentence of court-martial may not be allowed. Further, claims for damages based upon a theory of wrongful or tortious separation from active duty are not payable under the records correction statute. Matter of Reserve Members, 57 Comp. Gen. 554, 558 (1978). Thus, payment may not issue on Mr. Bond's claims for damages and other amounts believed due based on the alleged impropriety of his courts-martial.

Mustering-out pay was payable to military personnel serving on active duty between June 27, 1950, and January 31, 1955. See section 501(a), Title V of the Veterans Readjustment Act of 1952, 66 Stat. 688 and Proclamation No. 3080, January 5, 1955, 20 Federal Register 173. Since Mr. Bond's

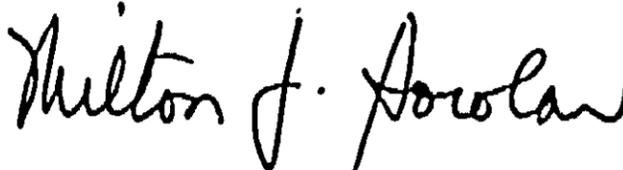
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date of entry on active duty was March 5, 1956, he was not on active duty during the appropriate period and therefore he was not eligible to receive mustering-out pay.

Concerning the payment of interest, it is a well-settled rule of law that interest may be assessed against the Government only under express statutory or contractual authorization. Fitzgerald v. Staats, 578 F.2d 435 (D.C. Cir. 1978); Matter of Make-Whole Remedies, 54 Comp. Gen. 760 (1975); 45 Comp. Gen. 169 (1965). Mr. Bond may therefore be allowed no interest on the amount of the leave settlement previously found due and tendered to him because of the change in his military discharge.

Other federally administered benefits to which Mr. Bond may have become entitled as the result of the upgrade of his discharge would appear to be those benefits within the exclusive jurisdiction of the Veterans Administration, and our Office has no authority to determine entitlement to or direct payment of these veterans benefits to former service members. See 38 U.S.C. 211(a) (1976). The question of entitlement to those benefits is therefore a matter which Mr. Bond should submit to the Veterans Administration.

Accordingly, the settlement of our Claims Division is sustained.



Acting Comptroller General
of the United States