

**DECISION**

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

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**FILE:** B-212684**DATE:** March 13, 1984**MATTER OF:** Kenon D. Shattuck, and others**DIGEST:**

Although 10 U.S.C. 1168(a) provides that a member of an Armed Force may not be discharged until his final pay and certificate of discharge are ready for delivery to him, the statute does not operate to invalidate an otherwise proper discharge when both the member and the service intend that and act as if a discharge or separation has occurred even though actual delivery of the discharge document is delayed.

The question to be resolved in this case is what is the effect on a Coast Guard member's separation from active duty when his final pay and certificate of discharge are not delivered to him at the time of the separation. Does the individual continue on active duty and is he entitled to pay, allowances and other benefits until he receives the documentation? Under the circumstances presented, there is no effect on the date of separation as a result of the Coast Guard's failure to deliver documentation and final pay.<sup>1</sup>

The three factual situations presented are as follows. Kenon D. Shattuck was separated from the service for the convenience of the Government on August 28, 1982. His final pay and discharge documentation were mailed to him on September 13 and received on September 16, 1982. Michael C. Young was separated at the expiration of his enlistment on January 2, 1981. He did not receive his Certificate of Release or Discharge from Active Duty, DD Form 214, until

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<sup>1</sup>This and related questions as applied to certain factual situations were presented by Mr. E. J. Rowe, an Authorized Certifying Officer of the Coast Guard. The submission has been assigned control number CG-ACO-1424 by the Department of Defense Military Pay and Allowance Committee per agreement with the Coast Guard. As a result of the answer to the general question the related questions need not be answered. The vouchers presented are returned but may not be certified for payment.

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February 2, 1981. Finally, D. Collins was discharged from the Coast Guard on May 23, 1980. At the time of his discharge he alleged error in the certificates of discharge and was subsequently issued another certificate on June 4, 1981. In each of these cases there was no doubt on the part of the individual involved or the Coast Guard that the individual had been separated and was no longer under military control after the initial date specified for separation. Each of them left military control and proceeded to their homes.

#### ANALYSIS

"A member of an Armed Force may not be discharged or released from active duty until his discharge certificate or certificate of release from active duty, respectively, and his final pay or a substantial part of that pay, are ready for delivery to him or to his next of kin or legal representative."  
10 U.S.C. 1168(a)

This provision originated in the Servicemen's Readjustment Act of 1944, June 22, 1944, ch. 266, 58 Stat. 284, 285, and was part of a more comprehensive section dealing with disability claims or potential claims arising out of a member's service. The purpose was to have records available and to process for discharge even members who were uncooperative in the process. It was not mentioned that the provision was intended to invalidate an otherwise proper discharge. H.R. No. 1418, 78th Cong. 2d Sess. (1944).

In certain circumstances a discharge or separation has been held to be defective and, as a result, an individual is considered as continuing on active duty and entitled to pay and allowances until a valid discharge is issued. Bray v. United States, 515 F.2d 1383 (Ct. Cl. 1975), Cason v. United States, 471 F.2d 1225 (Ct. Cl. 1973). Additionally, where a discharge or retirement order is not delivered to an individual in circumstances where he is not aware of his status, it has been held that the member is entitled to active duty pay and allowances until delivery of the order changing his status. Crist v. United States, 124 Ct. Cl. 825 (1952), and 49 Comp. Gen. 429 (1970). However, we are not aware of any authority holding that deviation from the requirement of

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10 U.S.C. § 1168(a) would invalidate an otherwise proper discharge.

In the cases presented there was no misunderstanding on the part of those involved. The discharged members and the Coast Guard knew that a separation had occurred. The Coast Guard had no jurisdiction over the former members and the members themselves believed they had been discharged. To say at this point that the untimely delivery of the original Certificate of Release or Discharge from Active Duty voided the discharge would not be in keeping with prior holdings which do not make the effective date of discharge depend upon delivery of documents when the parties are both aware and both intend to effect a discharge or separation on a given date.

Regarding the provisions of Coast Guard regulations which require the furnishing of a Certificate of Release or Discharge from Active Duty, DD Form 214, at the time an individual is separated, the applicable Department of Defense regulation (which also applies to the Coast Guard under 32 C.F.R. 45.2(a)) provides that the issuance of this form is to have no legal effect on termination of the member's service. 32 C.F.R. 45.3(b). Therefore, we do not find that failure to comply with additional requirements in Coast Guard regulations with respect to the furnishing of this certificate can have the effect of changing the otherwise established date of separation in order to permit payment of pay and allowances for added periods.

We do not view any possible failure to comply with 10 U.S.C. § 1168(a), in that final pay and a Certificate of Release or Discharge from Active Duty may not have been ready for delivery, as invalidating an otherwise proper discharge. The claims for continuation of pay after the date of discharge as originally fixed must be denied.

Our decision in this case should not be construed as authority to disregard 10 U.S.C. § 1168. The purpose of the statute is to have readily available to both the individual and the service information which is necessary to accomplish a separation or discharge. It should be complied with at all times.

*Milton J. Fowler*  
for Comptroller General  
of the United States