

D. MALLIN



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Claim of Rhonda J. Spier

File: B-230492.2

Date: April 2, 1990

DECISION

This is in response to Rhonda J. Spier's appeal of a Claims Group settlement which granted her separation pay upon her discharge from the Wyoming National Guard. She contends that she is entitled to readjustment pay. For the reasons presented below, Ms. Spier is entitled to either separation pay or readjustment pay, whichever is more favorable to her.

Ms. Spier was an enlisted member of the National Guard from June 1980 to October 1985. A determination was made by this Office that she had completed 5 years of continuous active service before her separation and that her release had been involuntary. As a result the Claims Group issued a settlement dated March 21, 1989, which approved payment of separation pay to Ms. Spier under the authority of 10 U.S.C. § 1174(c). She has now appealed that settlement on the grounds that she is entitled to readjustment pay.

Prior to the enactment of Pub. L. No. 96-513, December 12, 1980, 94 Stat. 2835, Section 687 of title 10, U.S. Code authorized payment of readjustment pay to members who were involuntarily released from active duty after 5 years of continuous active service. The criteria for entitlement to readjustment pay was similar to that required for separation pay under 10 U.S.C. § 1174(c). The act of December 12, 1980 added section 1174 to title 10 and repealed 10 U.S.C. § 687. However, this act also contained a savings provision which provided as follows:

Sec. 631. (a) A member of the Army, Navy, Air Force, or Marine Corps who -

- (1) was on active duty (other than for training) on the day before the effective date of this Act; and
- (2) after such date is involuntarily discharged or released from active duty

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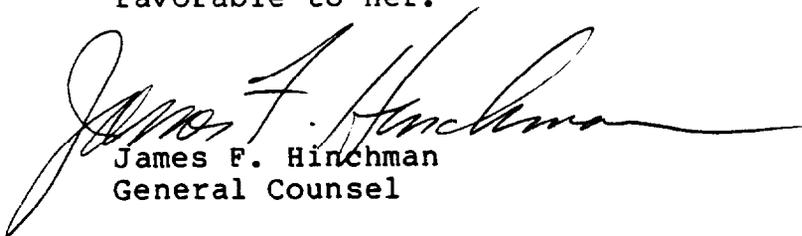
under any provision of title 10, United States Code, as in effect on or after such date,

is entitled to receive any readjustment payment or severance pay to which he would have been entitled under laws in effect on the day before the effective date of this Act.

(b) If a member to whom subsection (a) applies is eligible to receive separation pay under section 1174 of title 10, United States Code, as added by this Act, the member may not receive both a readjustment payment or severance pay under laws in effect on the day before the effective date of this Act and separation pay under such section, but shall elect which he will receive. If the member fails to make an election in a timely manner, he shall be paid the amount which is more favorable to him.

The law was later amended to provide an effective date of September 14, 1981. Pub. L. No. 97-22, July 10, 1981, 95 Stat. 137. Implementing regulations were issued in para. 40421 of the Department of Defense Military Pay and Allowances Entitlements Manual.

Accordingly, since Ms. Spier was on active duty (other than for training) on September 14, 1981 and had served on active duty for a continuous period of more than 5 years before being involuntarily separated, she is entitled to either separation pay or readjustment pay, whichever is more favorable to her.



James F. Hinchman
General Counsel