



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

B-177060

JAN 2 1973

Mr. E. J. Rowe
Authorized Certifying Officer
Department of Transportation
United States Coast Guard

Dear Mr. Rowe:

Further reference is made to your letter of September 18, 1972, requesting a decision as to the legality of paying AD2, a variable reenlistment bonus (VRB) in the circumstances involved in his case.

The record discloses that Petty Officer [redacted] enlisted for a period of 4 years on July 12, 1965. He executed an extension agreement on October 12, 1967, for 1 year and 4 months, effective July 12, 1969. On September 10, 1970, he executed a second extension agreement of 1 year, effective November 12, 1970. He reenlisted for a period of 6 years on August 31, 1971. The member was paid a reenlistment bonus in the amount of \$567 for his first and second extensions. He was paid a second reenlistment bonus in the amount of \$1,433 for his 6-year reenlistment.

Petty Officer [redacted] claims he is entitled to VRB for the reason that because his first extension was entered into prior to January 2, 1968, it should not have been combined with his second extension to become his first reenlistment and, therefore, his first reenlistment should have been on August 31, 1971, and a VRB was authorized for an AD rating at that time. A VRB was authorized for AD ratings effective March 19, 1971. His authorized certifying officer has expressed the view, with which you concur, that it is the effective date of an extension rather than the date an agreement to extend enlistment is entered into that determines a member's entitlement to benefits authorized for a reenlistment.

However, in view of the opinion to the contrary expressed by the Chief Counsel you requested a decision as to whether your conclusions have been in error and, if so, whether it is permissible to revise your regulations to provide that the date of agreement to extend enlistment is the controlling date and to settle prospective claims on the basis of such revised regulations.

Section 509, title 10, U.S. Code, provides in pertinent part as follows:

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"(a) Under such regulations as the Secretary concerned may prescribe, the term of enlistment of a member of an armed force may be extended or reextended with his written consent for any period. However, the total of all such extensions of an enlistment may not exceed four years."

Section 906, title 37, U.S. Code, provides that:

"A member of the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be, who extends his enlistment under section 509 of title 10 is entitled to the same pay and allowances as though he had reenlisted. For the purposes of determining entitlement to reenlistment bonus or to travel and transportation allowances upon discharge, all such extensions of an enlistment are considered one continuous extension."

Paragraph 2B01065D, Comptroller Manual CG-264, states as follows:

"Under the provisions of 10 USC 509 and 37 USC 906, two or more extensions entered into on or after 2 January 1968 are treated as a single extension. If the extensions total two years or more, they constitute a reenlistment for reenlistment bonus purposes. An extension entered into on or after 2 January 1968 may not be combined with one entered into before 2 January 1968 for this purpose."

Paragraph 2B01065D was based on the decision 48 Comp. Gen. 127 (1968) in which we held, quoting from the first syllabus, that:

"In determining entitlement to a reenlistment bonus for Army and Air Force personnel under the act of January 2, 1968, which authorizes the extension of enlistments not to exceed 4 years, not only for Navy and Marine Corps members but for the first time for Army and Air Force members who prior to the act were limited under 10 U.S.C. 3263 and 8263 to an enlistment extension for a period of less than one year, the act does not operate to require the combination of enlistment extensions entered into before and on or after January 2, 1968, due to the fact that Army and Air Force members could not prior to January 2, 1968 qualify for the reenlistment bonus authorized by 37 U.S.C. 308 for reenlistments or voluntary extensions of enlistments for 'at least 2 years.'"

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While that decision referred to Army and Navy personnel it applied equally to members of the Coast Guard in view of the fact that that part of 14 U.S.C. 461 assimilating Coast Guard personnel with personnel of the Navy was repealed by section 14d of the act of September 7, 1962, Public Law 87-649, 76 Stat. 451, as added by the act of November 2, 1966, Public Law 89-718, 80 Stat. 1115, 1124, as corrected by the act of September 11, 1967, Public Law 90-83, 81 Stat. 195, 220.

Article 1-G-84, Personnel Manual, U. S. Coast Guard, provides as follows:

"Unless canceled for one of the reasons set forth in Article 1-G-85, an Agreement to Extend Enlistment becomes effective on the date next following the normal date of expiration of enlistment or the date of expiration of enlistment as voluntarily extended or as extended for the purpose of making up time not served (see Article 12-B-5), as appropriate."

Article 1-G-85 provides in pertinent part that:

"(a) Commanding officers are authorized to cancel agreements to extend enlistments:

"(1) At any time prior to the time the extension begins to run, but not thereafter either for the convenience of the Government or the person concerned. * * *

In decision 35 Comp. Gen. 663 (1956) we said that a voluntary extension of an enlistment for 2 or more years is to be considered a "reenlistment" and regardless of the date on which the extension agreement may be filed by the member, it seems plain that service under such agreement would not begin and that, therefore, "reenlistment" would not become effective until after the normal date of expiration of the enlistment current when the agreement was signed. Thus, the reenlistment bonus authorized for a voluntary extension of enlistment for 2 or more years was held to be payable only after the expiration of the current term for which the member is obligated to serve.

The same rule is applicable to combined extensions under 10 U.S.C. 509 and 37 U.S.C. 906 which constitute a reenlistment. Hence an enlistment or reenlistment is not entered into by an agreement to extend an existing enlistment until the member commences to serve under the extension agreement. This is true because until such time as the

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agreement to extend becomes effective it is subject to cancellation for various reasons, including reenlistment on that date for any period of enlistment of not less than the term of the extension agreement which would automatically cancel the agreement to extend.

Petty Officer first extension of enlistment became effective July 12, 1969, which was subsequent to the effective date of 10 U.S.C. 509 and 37 U.S.C. 906 and when his second extension became effective on November 12, 1970, he was entitled to and should have been paid a first reenlistment bonus. While his reenlistment on August 31, 1971, had the effect of cancelling the remaining service obligation under his second extension agreement, it had no bearing on his entitlement to a first reenlistment bonus since he had already served in excess of 2 years under his first and second extensions. Consequently, he was correctly paid a second reenlistment bonus for his August 31, 1971, reenlistment.

Under 37 U.S.C. 308(g) a member who is designated as having a critical military skill who is entitled to a reenlistment bonus upon his first reenlistment may be paid an additional amount not more than 4 times the amount of that bonus. At the time Petty Officer first reenlistment was effective on November 12, 1970, a member with his rating was not authorized VRB. While a VRB was authorized for AD ratings effective March 19, 1971, he was not entitled to a VRB upon his reenlistment on August 31, 1971, because this was his second reenlistment.

Accordingly, you are advised that your conclusions concerning this case are correct and there is no authority for revision of the regulations to provide that the date an agreement to extend enlistment is the controlling date for entitlement to reenlistment bonus.

Sincerely yours,

R.F.KELLER

Deputy Comptroller General
of the United States