## DECISION



## THE COMPTROLLEH GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

FILE:

B-184557

51005 DATE: 97461

MATTER OF:

Entitlements of Regular commissioned officer discharged under 10 U.S.C. 3814a

DIGEST:

A Regular Army commissioned officer discharged with readjustment pay in accordance with 10 U.S.C. 3814a may receive travel and transportation allowances provided in 37 U.S.C. 404(c), 406(d) and 406(g) for members involuntarily released from active duty with readjustment pay, since the congressional intent was to treat such officers in the same manner as Reserve officers involuntarily released from active duty with readjustment pay.

This action is in response to a letter dated July 16, 1975, from the Assistant Secretary of the Army (Manpower and Reserve Affairs) requesting an advance decision on the question whether Regular Army commissioned officers "discharged with readjustment pay" under 10 U.S.C. 3814a (1970), as added by Public Law 93-558, approved December 30, 1974, may select their homes for the purpose of receiving travel and transportation allowances under 37 U.S.C. 404(c), 406(d) and 406(g). That letter was forwarded to our Office by the Per Diem, Travel and Transportation Allowance Committee, and has been assigned PDTATAC Control No. 75-22.

The request for decision states that officers discharged in accordance with 10 U.S.C. 3814a do not fit precisely either of the categories listed in 37 U.S.C. 404(c), 406(d) or 406(g), 1.e., discharged with severance pay or involuntarily released from active duty with readjustment pay. It further states that while a literal interpretation of the statute would appear to deny such discharged officers any travel and transportation entitlements except to their home of record, it was the Secretary's belief that the act was not intended to be so restrictive.

The Secretary asks whether Regular officers discharged with a readjustment payment may be provided the same travel and transportation allowances based upon home of selection as are provided for Reserve officers "involuntarily released from active duty." If our answer is in the affirmative, the Secretary asks whether regulations issued regarding this allowance would have a retroactive effect to cover all cases falling under 10 U.S.C. 3814a.

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The statute in question provides that commissioned officers of the Regular Army in grades below major may be involuntarily discharged whenever a reduction in the active duty officer personnel strength of the Army is required. The act provides that if the officer is not eligible for retirement under 10 U.S.C. 3911, or any other provision of law, then under prescribed board recommendations he will be removed from the active list of the Regular Army and discharged. An officer so discharged who has completed immediately before his discharge, at least five years of continuous active duty is entitled to readjustment pay as provided by 10 U.S.C. 3814a(c).

Other than the method authorized by 10 U.S.C. 3814a the involuntary release of Regular Army officers short of completion of a set number of years of service is prohibited except in specific situations. Officers in a probationary status (less than three years of active commissioned service in the Regular Army) may be separated at the discretion of the Secretary of the Army and officers holding the grade of captain or below may be separated because of promotion failure or pursuant to a court-martial, or show cause proceedings. Separated Regular officers of the Army may be eligible for severance pay under 10 U.S.C. 3786(b)(2).

In contrast, Reserve officers serving on active duty in grades below major can be released involuntarily at the discretion of the Secretary of the Army. See 10 U.S.C. 1162 (1970). Such involuntarily released officers may be entitled to readjustment pay under 10 U.S.C. 687.

The statutory authorities for travel and transportation allowances as cited above contain the phrases "discharged with severance pay" which is applicable to discharged Regular Army officers and "involuntarily released from active duty with readjustment pay" which is applicable to Reserve officers. The phrase "discharged with readjustment pay" is not used therein since prior to the enactment of 10 U.S.C. 3814a it would not have been applicable to either a Regular or Reserve officer.

The legislative history of Public Law 93-558 indicates that as a result of current events the number of officers authorized for the Army has been reduced. This has resulted in heavy reductions in force of Reserve officers in prior years and has resulted in careful screening of all Reserve officers on active duty in the grade of

captain and below. Apparently, a comparison of the records of the Reserve officers remaining on active duty with those of their Regular contemporaries revealed that many Reserve officers had greater potential. Therefore, Congress determined that in the best interest of the Army any additional reduction in force should be applied to both Regulars and Reserves. In considering the legislation which allowed the reduction in force to be applicable to Regulars as well as Reserves, the statement was made that the readjustment payment provision of the act was designed with the same provisions as that for Reserve officers released from active duty.

It was also stated that it was anticipated that the Regular officers who were not selected for continuation would be treated similarly to Reserve officers who have been released from active duty and be given the opportunity to accept a Reserve commission. This was done in order to place them in the same approximate position as their contemporaries in the Reserve who upon being released from active duty, normally retain their status in the Reserves.

Thus it would appear that in enacting Public Law 93-558, supra, Congress intended to bestow upon a Regular separated from the service in accordance with this act all the rights and benefits applicable to a Reserve separated in similar circumstances. While it is true that the applicable sections of the statutes granting travel and transportation allowances do not specifically apply to a Regular who is discharged with readjustment pay as is the case under the new act, we believe the intent of Congress was to provide the Regular all the benefits of a Reserve separated under the same conditions. In view of that intent the technical terms used to describe the type of separation and the type of additional payment received upon separation should not be used to prevent the granting of travel benefits based upon home of selection. Accordingly, it is our view that Regular officers discharged under 10 U.S.C. 3814a are entitled to home of selection travel benefits to the same extent as if they had been "discharged with severance pay" or "released from active duty with readjustment pay." In view of the above interpretation of the controlling statutes no change in the regulations is required to implement this decision.

The submission is answered accordingly.

R.F. KELLER

Acting Comptroller General of the United States