

DECISION

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

61576

FILE: B-187214

DATE:

SEP 20 1976

MATTER OF: Mr. Joseph H. Smyth, Jr.

98007

DIGEST: Former enlisted member of Regular Army discharged with over 12 years' service is not entitled to separation pay since statutory authority for readjustment pay is applicable only to members of Reserve components and severance pay only to commissioned officers of the Regular Army.

This action is in response to a letter dated February 19, 1976, from Mr. Joseph H. Smyth, Jr., appealing our Transportation and Claims Division (now Claims Division) settlement dated March 17, 1975, which disallowed his claim for separation pay following his discharge as a Regular enlisted member in the United States Army.

In his letter Mr. Smyth asks for an explanation as to why officers who are released after 5 years of service in the military may receive severance pay to adjust to civilian life while an enlisted man does not. He also requests that this Office issue a favorable decision to him which would entitle him to submit a claim for separation pay under conditions similar to those provided in 10 U.S.C. 687 (1970).

The records indicate that Mr. Smyth, while an enlisted member of the Regular Army, was honorably discharged on June 3, 1974, following the expiration of his term of service. At that time he had over 12 years of active service.

Section 687 of title 10, United States Code, provides for payment of readjustment pay to a member of a Reserve component, either enlisted and commissioned, or a member of the Army or the Air Force without component who is released from active duty under stated conditions.

Section 3303 of title 10, United States Code, provides in part, that certain commissioned officers of the Regular Army, i.e., captain through lieutenant colonel, will be discharged with severance pay on failure of promotion.

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Thus, upon discharge only members of the Reserve components may be entitled to readjustment pay and only the named commissioned officers of the Regular Army may be entitled to severance pay. We are unaware of any statutory provision which would authorize payment of separation pay, either readjustment or severance, to Regular enlisted members of the Army upon discharge from service.

Under the provisions of 31 U.S.C. 71 (1970), all claims and demands against the United States shall be adjusted and settled by this Office. However, in the settlement of such claims, this Office must comply with the applicable provisions of the law and regulations governing entitlement. In the absence of a statutorily recognized entitlement, payments on claims may not be made.

Accordingly, since there is no statutory authority for payment of separation pay to an enlisted member of the Regular Army, the settlement of March 17, 1975, is sustained.

R.F.KELLER

(Deputy) Comptroller General
of the United States