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DECISION



20955
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-203752

DATE: March 2, 1982

MATTER OF: Lilborn C. Chisam

- DIGEST: 1. To be entitled to military pay and allowances for the period following a discharge to the end of the enlistment in which the former member was serving, his service records must reflect not only the upgrading of the discharge, but also a voiding of the original discharge and a determination that he remained on active duty.
2. The upgrading of a former member's discharge from "other than honorable" to "honorable", gives the former member the military benefits he would have received at the time of his original discharge had that discharge been granted under honorable conditions provided there is sufficient documentation to substantiate his entitlement.

Mr. Lilborn C. Chisam, requests reconsideration of our Claims Group's settlement denying his claim for unpaid pay and allowances he believes are due him incident to an upgrading of his discharge to "honorable" from "other than honorable." Our Claims Group denied this claim because there was no determination that Mr. Chisam remained on active duty following his discharge and there was insufficient documentation to establish the validity of Mr. Chisam's claims arising prior to his discharge, since his pay records had been destroyed pursuant to law. Subsequently, Mr. Chisam's service records were corrected under 10 U.S.C. 1552 (1976) to delete the designator showing the reason for his discharge.

We affirm our Claims Group's disposition of this claim. The deletion of the designation showing the reason for Mr. Chisam's discharge does not alter any material facts in the claim as presented to our Claims Group. Furthermore, there is no entitlement to additional pay and allowances following his discharge since his records were not corrected to show that he remained on active duty following his discharge. Likewise, where records have been destroyed pursuant to law and the claimant lacks sufficient documentation to prove his claim, it must be denied.

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Mr. Chisam received an "other than honorable" discharge from the Air Force on April 23, 1957. On September 13, 1977, a Discharge Review Board upgraded Mr. Chisam's discharge to "honorable", though it did not change a designator on the form showing the reason for his discharge. Based on this upgrading, Mr. Chisam made a claim for unpaid pay and allowances for the unserved portion of his tour; recoupment of the portion of his reenlistment bonus lost due to his discharge; pay and allowances for 23 days of his tour which he served, but for which he alleges he was not paid; compensation for uniforms that were confiscated at the time of his discharge; and a travel allowance following his discharge. Our Claims Group, on January 18, 1979, denied most of the claim, but certified settlement in Mr. Chisam's favor in the amount of \$43.36, representing travel entitlements upon discharge. On September 19, 1980, the Air Force Board for the Correction of Military Records, at Mr. Chisam's request, deleted the designator showing the reason for the discharge. Mr. Chisam then asked for a reconsideration of his claim.

The deletion of the designator showing the reason for the discharge is not material to Mr. Chisam's claim. His service record has still been amended solely to show an upgrade in the character of his discharge to "honorable." Where the record is corrected to show a change in the character of the discharge only, the former member is entitled only to the benefits he would have received had the initial discharge been under honorable conditions. B-140972, October 24, 1979.

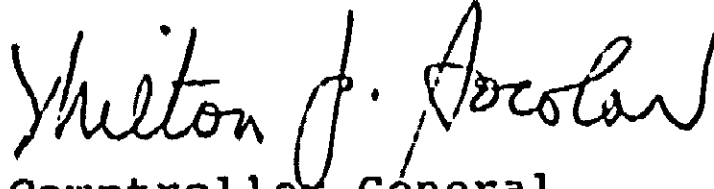
To be entitled to pay and allowances for the period following discharge to the end of the enlistment in which the former member was serving, his records must show a determination that he remained on duty during that period. B-140972, October 24, 1979. The largest part of Mr. Chisam's claim is for pay and allowances for the entire period following his discharge to the end of the enlistment in which he was serving, yet his service records do not show that he remained on active duty during this period. Therefore, this part of Mr. Chisam's claim is disallowed.

As to any claims he has in connection with service performed prior to his discharge, they must be denied

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since no records are available to either prove or disprove his claim. Ordinarily, proof of the validity of a claim can be found in Government records. However, where long periods of time have passed and records which may prove or disprove the validity of the claim are unavailable, there is no alternative but to disallow the claim, B-140972, October 24, 1979. We note, as Mr. Chisam acknowledges, that the Air Force lawfully destroyed his pay records pursuant to regulations authorized by law. See Chapter 33 of Title 44, United States Code and 41 C.F.R. § 101-11.4. The burden of proof concerning the existence and nonpayment of a valid claim against the Federal Government is on the person asserting the claim, 4 C.F.R. § 31.7 (1981); B-140972, October 24, 1979. Mr. Chisam has not produced any written records to support his claim for pay and allowances for the 23 days of his tour which he served, but for which he alleges he was not paid; nor for compensation which he alleges is due him for his uniforms confiscated at the time of his discharge. Additionally, any amounts recouped from the reenlistment bonuses would appear to have been properly collected pursuant to the Act of July 16, 1954, ch. 535, § 2, 68 Stat. 488, 489. In any event the records which would either prove or disprove his claim are not available. Therefore, these portions of Mr. Chisam's claim must also be denied.

Accordingly, our Claims Group's settlement must be sustained.

for 
Comptroller General
of the United States