

DECISION

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

67**FILE:** B-207299**DATE:** October 6, 1982**MATTER OF:**

- DIGEST:**
1. Section 1552 of title 10, United States Code, as amended by Public Law 96-513, Title V, § 511 (60), December 12, 1980, 94 Stat. 2925, authorizes the Secretary of Transportation, acting through the Coast Guard Board for Correction of Military Records, to correct the military records of former Coast Guard members if it is considered necessary to correct an error or remove an injustice. The Board acted within its authority when it extended the active duty of a former Coast Guard member who did not receive a discharge document, i.e., DD Form 214, on the date of his discharge as was required by Coast Guard regulations. This Office is without authority to question the determinations of the Board in the absence of fraud.
 2. When a Coast Guard member is discharged but later extended on active duty through the correction of his military record under 10 U.S.C. § 1552 he is entitled to military pay and allowances for this period. Civilian earnings during this period may not be deducted from the net amount of military backpay found due him absent some express authority either in statute or Coast Guard regulations. Since 10 U.S.C. § 1552 does not expressly authorize the deduction of interim civilian earnings, nor does any Coast Guard regulation, the Coast Guard may not reduce the amount of backpay due a former member by the amount of his civilian earnings.

An authorized certifying officer of the United States Coast Guard has requested an advance decision on whether the interim civilian earnings of a former Coast Guard member, 458 78 2434, should be offset against the amount of pay and allowances determined to be due as a result of the correction of his service record. Additional questions are also presented concerning the general application of 10 U.S.C. § 1168, which relates to discharges. The request was approved and assigned Control Number ACO-CG-1391 by the Department of Defense Military Pay and Allowance Committee. For the reasons set forth below we hold that the Coast Guard should not deduct interim civilian earnings from the backpay and allowances due him.

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With regard to the general questions concerning the application of 10 U.S.C. § 1168, no decision will be rendered at this time since a response has no bearing on the case before the certifying officer for payment. However, should a case arise in the future concerning the application of 10 U.S.C. § 1168 and a voucher is presented to the officer for certification he should request an advance decision and a decision will be rendered on the particular facts of that case.

Pursuant to the decision and recommendation of the Coast Guard Board for Correction of Military Records, service record was corrected to show a new date of discharge. Although the Coast Guard discharged on November 3, 1978, it failed to deliver his copy of a discharge document, DD Form 214, until January 9, 1979. Since Coast Guard regulations require the delivery of DD Form 214 at the time of discharge, the Board ruled that discharge was without legal effect until such time as the form was delivered to him, i.e., January 9, 1979. In addition to correcting date of discharge, the Board ordered the Coast Guard to pay full pay and allowances to for the time spent at home awaiting his papers.

Section 1552 of title 10, United States Code, as amended by Public Law 96-513, Title V, § 511 (60), December 12, 1980, 94 Stat. 2925, authorizes the Secretary of Transportation, under procedures established by him and acting through a board of civilian employees, to correct the military record of any Coast Guard member when he considers it necessary to correct an error or remove an injustice. The Board determined, as it was empowered to do under 10 U.S.C. § 1552, that served on active duty from November 3, 1978, until January 9, 1979. This Office is without authority to question the determinations of the Board since, in the absence of fraud, an authorized correction actually made is final and conclusive on all officers of the United States. 44 Comp. Gen. 143 (1964).

Subparagraph (c) of section 1552 as amended, provides, in part, that the Department of Transportation may pay from the applicable current appropriations a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits if, as a result of correcting a record the amount is found to be due the claimant on account of his service in the Coast Guard. In our decisions 34 Comp. Gen. 7 (1954) and 50 Comp. Gen. 180 (1970), we held that the Secretaries of the Army, Navy, Air Force and, then Treasury--now Transportation with respect to Coast Guard

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matters--are not vested with discretionary power to make determinations of the amounts to be paid as a result of the correction of military records pursuant to 10 U.S.C. § 1552; and the amounts to be paid under that statute depend solely upon a proper application of the statutes and regulations to the facts as shown by the corrected record in each particular case.

It follows from the Board's correction of record that he is legally entitled to receive backpay and allowances for the period of his extended active duty. Whether civilian earnings for the same period should be deducted from his entitlement to backpay and allowances must be ascertained from the applicable laws and regulations.

The provisions of 10 U.S.C. § 1552 neither expressly require nor expressly prohibit the deduction of interim civilian earnings from awards of extended active duty military pay and allowances. The propriety of deducting earnings received from civilian employment in effecting settlement of backpay and allowances found due a member or former member of the uniformed services by reason of the correction of his military or naval records pursuant to the provisions of 10 U.S.C. § 1552 was considered in several decisions of our Office.

We advised the Secretary of Defense by our decision of March 10, 1969, 48 Comp. Gen. 580 that interim civilian earnings could be deducted in effecting settlements of backpay and allowances if proper regulations were issued requiring such deductions. We reasoned that the issuance of such regulations would not be inconsistent with 10 U.S.C. § 1552 and would be in keeping with the treatment accorded to comparable cases by the Court of Claims. See, e.g., _____ v. United States, 407 F.2d 879, 187 Ct. Cl. 319 (1969); _____ v. United States, 175 Ct. Cl. 862 (1966); _____ v. United States, 174 Ct. Cl. 899 (1966); and opinions cited therein. See also, B-195129, April 28, 1980.

We note that, following our recommendation in 48 Comp. Gen. 580, *supra*, the Assistant Secretary of Defense advised the Secretaries of the Army, Navy, and Air Force by memoranda of March 12, 1969, that appropriate action should be taken to require deduction of interim civilian earnings. Subsequently, each of the military departments under the Department of Defense promulgated regulations which required the set off of interim civilian earnings against administrative claims for backpay and allowances. 32 C.F.R. § 581.3(g)(3) (1980) (Army); 32 C.F.R. § 723.10(c) (1981) (Navy); 32 C.F.R. § 865.15(c) (1981) (Air Force).

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We have researched the Coast Guard's regulations including those governing the correction of military records at 33 C.F.R. § 52V(1981), and we can find no evidence that the Coast Guard ever promulgated regulations similar to those of the Army, Navy, or Air Force. Thus, it appears that there is no express authority in law or regulation for the Coast Guard to set off the interim civilian earnings of a former member who claims backpay and allowances incident to a correction of his service records extending his active duty. Therefore, we hold that the Coast Guard should pay full pay and allowances for the period of his extended active duty, November 3, 1978, to January 9, 1979, as determined by the Board. interim civilian earnings for that period should not be deducted from his entitlement.

Should regulations be issued requiring a deduction of interim civilian earnings, where appropriate, in cases involving administrative claims for backpay and allowances following corrections of Coast Guard records, our Office would apply the regulations in the audit of disbursing officers' accounts and in the settlement of claims which may come before us in such cases.

The vouchers and supporting papers in this case are returned for payment on the basis of our decision.

for *F. H. Barclay, Jr.*
Comptroller General
of the United States