



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Benjamin G. Spears - Retroactive Payment of  
Commuted Rations

File: B-228765

Date: December 4, 1987

---

### DIGEST

In appropriate circumstances an enlisted member of the Navy may apply to mess separately and receive commuted rations. Until an application is filed and approved by the appropriate officer, the enlisted member has no entitlement to commuted rations, and applicable law and implementing regulations preclude retroactive payments. Thus, where a Navy member claims retroactive commuted rations for a period in excess of 3 years, but he never had an application approved by appropriate authority, he cannot receive retroactive payment, notwithstanding that it may appear that such application would have been approved. The appropriate avenue of relief in such a case would be a petition to the Board for the Correction of Naval Records.

---

### DECISION

Mr. Benjamin G. Spears, a former enlisted member of the Navy, appeals the Claims Group's denial of his claim for retroactive payment of commuted rations for the period April 12, 1982, through September 16, 1985. Since there is no evidence that the commanding officer having authority to grant such approvals ever approved commuted rations for Mr. Spears, the payment of this claim is precluded by the law and regulations under which the allowance arises.

### BACKGROUND

In April of 1982, shortly after his marriage, Mr. Spears, then an enlisted member of the Navy stationed at the Naval Air Station, Moffett Field, California, moved out of Navy bachelor quarters to reside with his wife in civilian housing in Sunnyvale, California. He states that he filed an application to be authorized to mess separately; that is, a request for permission to take his meals separately from

040778

an otherwise available government mess and, in lieu thereof, to receive an allowance for food (commuted rations). What happened to his request is unknown, but apparently it was never received and approved by the officer with authority to approve such requests, and Mr. Spears was not paid commuted rations, except for leave rations for periods he was on leave. Less than a week before his discharge date of September 16, 1985, the disbursing auditor who was reviewing his pay account advised Mr. Spears that he had not received payment for commuted rations. He was told to file a new application so that he could be paid for this allowance.

Mr. Spears was discharged as scheduled and his application for retroactive payment of commuted rations was forwarded to the Navy Finance Center. After obtaining additional information from the claimant's commanding officer and thoroughly reviewing the matter, the Navy Finance Center determined that retroactive payment could not be made because there was no record of his request for permission to mess separately having been approved, and the applicable law and regulations preclude retroactive approval and payment of commuted rations. Thus, he could receive reimbursement for the period in question only if the appropriate commanding officer had approved the original application Mr. Spears indicated he had filed. The commanding officer of the Personnel Support Activity covering Moffett Field conducted an investigation but found no record of Mr. Spears ever having filed an application nor of his ever having received permission to mess separately. Thus, Mr. Spears' claim was denied, but he was apprised that if he could supply evidence that his request for the allowance had been approved, he could be paid retroactively. Subsequently, this case came before our Claims Group which denied the claim for the same reasons the Navy Finance Center denied it.

In support of this request for reconsideration, it is suggested that Mr. Spears' failure to receive commuted rations was due solely to administrative error, and he should not be denied the allowance because of this administrative error. It is further stated that (a) his situation is a unique one and the regulations precluding payment of the allowance should not be applied to him and (b) his claim is not for retroactive pay but rather simply a claim for a basic allowance which he had never been apprised of but was eligible for.

#### ANALYSIS

As a general rule enlisted members of the armed forces are furnished their meals at a government mess. Under certain

conditions, however, they may mess separately and receive a basic allowance for subsistence in lieu of being furnished meals. Such conditions include (a) when rations in kind are not available, (b) when permission to mess separately is granted, and (c) when assigned to duty under emergency conditions where no government mess is available. 37 U.S.C. § 402(b). The Department of Defense Military Pay and Allowances Entitlements Manual (Pay Manual) provides guidance as to how this provision is to be implemented by the services concerned. Paragraph 30131 of the Pay Manual provides that enlisted members are authorized to mess separately consistent with paragraph 30114 of the Pay Manual, but "[a]uthorization to mess separately cannot cover retroactive periods." Paragraph 30114b of the Pay Manual states that Navy members are authorized to mess separately in accordance with the Bureau of Naval Personnel Manual (Navy Manual).

Section 2640100 of the Navy Manual reiterates the aforementioned provisions of 37 U.S.C. § 402(b). It then goes on to point out that a commuted ration rate, that is an allowance for subsistence, is paid when an enlisted member requests and receives authorization to subsist separately from an available government mess. Moreover, even if a member applies and receives authorization to mess separately, such authorization is only temporary and is reviewed annually or more frequently if necessary. Perhaps most relevant to the present case is that the normal procedure for an enlisted member is to take his meals at a government mess. Consistent with this is the statement that:

"Subsistence allowance shall not be authorized solely on the basis of the member's marital status, dependency, location of residence, pay grade or as an extra incentive or compensation for assignment to specialized duty. Each application shall be considered on its own merit." (Emphasis added.)

Thus, there is no entitlement for a member to mess separately simply because his marital status changes. Indeed, as section 2640110 explains, an enlisted member on duty where a government mess is available may be authorized commuted rations but only if he requests this allowance. Once a member makes such a request it is for the commanding officer to decide whether to approve this request consistent with policies that he has established. In any event, the commanding officer must "take into consideration the necessity to maintain a general mess which can be operated effectively and economically with a reduced and/or varying patronage." The commanding officer, therefore, should not

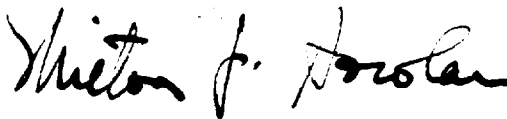
approve applications if such approval interferes with the effective and economical administration of the government mess. Finally, this section of the Navy Manual repeats the language of the Pay Manual that commuted rations cannot be approved retroactively.

As can be discerned from the above discussion, it is not for us to determine whether Mr. Spears would have received permission to mess separately and receive commuted rations, nor can we determine whether, if his application had been approved, he would have received approval each year thereafter. Rather, these determinations were to be made by the local commanding officer consistent with his policies and those explicitly stated in the Navy Manual. Thus, in view of this and the express language in the Pay Manual and Navy Manual stating that commuted rations cannot be paid retroactively, we cannot authorize payment of Mr. Spears' claim. This is consistent with our holdings in other similar cases. See, B-177190, February 5, 1973; B-167744, September 15, 1969; and B-127063, September 20, 1956.

Accordingly, we affirm the Claims Group's denial of this claim.

We note that the appropriate avenue of relief open to Mr. Spears in this situation would appear to be to petition the Board for the Correction of Naval Records for a correction of his record. Under 10 U.S.C. § 1552 the Secretary of the Navy acting through the Correction Board composed of civilians of the Navy Department may correct any military record of that Department when he considers it necessary to correct an error or remove an injustice. Subsection 1552(c) further provides that the Department concerned, may pay--

" . . . a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or for the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due the claimant on account of his . . . service . . . ."



Acting  
Comptroller General  
of the United States