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Office of the General Counsel

B-251775

April 29, 1993

Kenneth J. Emanuel, Esq.
Office of the General Counsel
Office of Counsel
Naval Aviation Depot
Naval Air Station
Jacksonville, Florida 32212-0016

Dear Mr. Emanuel:

This further replies to your request of November 17, 1992, for our opinion concerning the credit several retired military members who are civilian Naval Aviation Depot employees (not covered by a collective bargaining agreement) have been given for their prior military service in computing their entitlement to annual leave. The employees seek credit for all active service performed during the Korean and Vietnam conflicts, but the agency following Office of Personnel Management (OPM) guidance, has allowed credit only for periods actually served in the "campaign or expedition" areas.

The employees' credit for prior military service is authorized by 5 U.S.C. § 6303(a)(3)(B) (1988), which provides credit for service performed "... during a war, or in a campaign or expedition for which a campaign badge has been authorized" OPM has the authority to prescribe regulations for the administration of the leave statutes. 5 U.S.C. § 6311. In doing so, as you note, it has distinguished between credit for service "during" a war and credit for service "in" a campaign or expedition (including the actions in Korea and Vietnam). Federal Personnel Manual (FPM) Supplement 296-33.

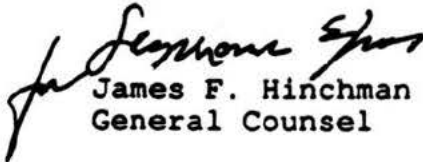
Although the employees believe their military service in Korea or Vietnam should be credited as earned "during" war because 38 U.S.C. § 101 (1988) defines service in Korea or Vietnam as service during a period of war for veteran's benefits purposes, OPM explicitly rejects this definitional scheme for its civil service purposes. See Figure 7-7, footnote 1, in FPM Supp. 296-33.

As you are aware, we previously considered these same issues in our decision , B-213727.2, June 8, 1987.

In that decision, we found OPM's interpretation of the statute reasonable and deferred to it. The Aviation Depot employees have presented nothing which would cause us to change that conclusion.

Accordingly, your agency's computation of the employees' credit for their prior military service consistent with OPM's interpretation of 5 U.S.C. § 6303(a)(3)(B) appears correct.

Sincerely yours,


James F. Hinchman
General Counsel

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DIGEST

Office of Personnel Management's interpretation in Federal Personnel Manual Supplement 296-33 of the language in 5 U.S.C. § 6303(a)(3)(B) (1988) which gives credit for prior military service in computing an employee's entitlement to annual leave is not unreasonable in distinguishing between service "during" a war and service "in" a campaign or expedition. Although OPM's definition is different than that in 38 U.S.C. § 101 (1988), which concerns veteran's benefits, OPM has the statutory authority to administer the leave system and its determination will not be disturbed by GAO.