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United States General Accounting Office
Washington, DC 20548

Office of
General Counsel

In Reply
Refer to: B-195129

July 10, 1980

Colonel Carl F. Johnston, SigC
U.S. Army Communications System Agency
Project Manager DCS (Army) Communications
Systems (DPM-ETS)
APO New York 09056

Dear Colonel Johnston:

This letter is in response to yours dated May 15, 1980, requesting reconsideration of Comptroller General decision B-195129, April 28, 1980, which concerned the monetary settlement to be concluded with you as the result of the action taken by the Army Board for Correction of Military Records to nullify the fact of your retirement in 1974, and to retroactively promote you and restore you to active military service. We have also received your letter of May 14, 1980, to the Army Finance and Accounting Center which was forwarded here by that agency.

In the decision it was concluded, among other things, that the amount of earnings you received from civilian sources between June 1975 and January 1977 was deductible from the net amount of active duty military backpay found to be due to you for the period of your invalid Army retirement from September 1974 through February 1977. You say that while you do not agree with the conclusion reached that interim civilian earnings should be deducted in the settlement, you understand that the rule requiring that deduction is in the Government's interest. However, you question whether the rule properly applies equally to Regular as well as Reserve officers. In that connection, you note that the rule as it was applied in 2 of our earlier decisions on the subject, 56 Comp. Gen. 587 (1977) and 57 Comp. Gen. 554 (1978), affected only a group of Army Reserve officers. You therefore express uncertainty as to whether we were aware of the fact that you were a Regular Army officer when we issued our April 28, 1980 decision in your case, and whether our earlier 2 decisions concerning Reserve officers should



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have any application to your own situation. In addition, you suggest that even if the rule regarding the deduction of interim civilian earnings is applicable in your case, then the deduction should be a limited setoff only against the military active duty backpay credited to your account during the period of your civilian employment between June 1975 and January 1977, rather than a general setoff against all the backpay that accrued to your credit during the entire period of your invalid retirement from September 1974 through February 1977.

At the time we issued our April 28, 1980 decision in your case, we were not entirely certain whether you were an Army Reserve or Regular officer. The service records before us at that time indicated that you were a Reserve officer in 1965, and they did not show that you had been given a Regular Army appointment thereafter. However, we viewed it as immaterial whether you had been appointed as a Regular officer. Although our decisions 56 Comp. Gen. 587 and 57 Comp. Gen. 554, supra, were concerned with a group of Army Reserve officers, as we indicated in the decision issued in your case the rule requiring deduction of interim civilian earnings from military backpay awards has long been for general application in all cases involving service members retroactively restored to active duty, regardless of whether the particular member concerned is an officer or enlisted man, or has Regular or Reserve status, and irrespective of his branch of service. Hence, we concluded that whether or not you were a Regular Army officer, the civilian earnings you received during the period of your invalid retirement were deductible from amounts of military active duty backpay credited to your account for that period. Furthermore, the interim civilian earnings were for setoff against all of the military active duty backpay due to you for the entire period of your invalid retirement, notwithstanding that you may have been unemployed during a portion of that period. See Craft v. United States, 589 F. 2d 1057, 1060-1069

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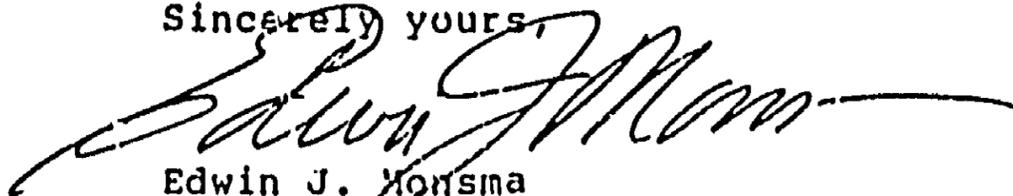
(Ct. Cl. 1978), copy enclosed; 49 Comp. Gen. 656 (1970) (involving 2 Regular Navy officers); and 48 Comp. Gen. 580 (1969). Also, compare 55 Comp. Gen. 48 (1975), concerning the application of the rule in civilian backpay cases.

We regret that you find the conclusions reached in our April 28, 1980 decision to be unsatisfactory in certain respects. Nevertheless, your letters contain no new material evidence or information which could properly serve as a basis for altering or revising the settlement of your legal claims incident to your retroactive restoration to active military service. Accordingly, we have no basis for amending our April 28, 1980 decision.

Enclosed with your letter of May 14 was a Claims Certificate executed by you acknowledging your acceptance of it as the correct settlement of your legal claims against the Government incident to your retroactive restoration to active duty. In that letter you also requested a waiver under the provisions of 10 U.S.C. 2774 for accrued leave payments required to be collected in the settlement but for which, due to the statutory leave limit, days of leave could not be restored. Please be advised that your application for waiver has been granted in the amount requested (\$2,753.07). The Army Finance and Accounting Center will advise you further about the waiver and arrange for payment in separate correspondence.

We trust this will serve the purpose of your inquiry.

Sincerely yours,



Edwin J. Monsma
Assistant General Counsel

Enclosure