DECISION

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

FILE: B-217631 **DATE:** June 12, 1985

MATTER OF: Willie J. Shelton

DIGEST:

1. If the character of a former service member's discharge is upgraded from less than honorable to honorable, the former member becomes entitled to additional amounts that would have been payable at the time of actual discharge if it had been issued under honorable conditions. Thus, a former Army member who received a dishonorable discharge in 1953 later became entitled to the mustering-out payment authorized only for honorably discharged veterans of the Korean conflict when his discharge was upgraded in 1979.

2. Under the laws in effect in 1953, soldiers were entitled to retain reenlistment bonuses previously received, and to receive refunds of their Army savings deposits, even if they were issued dishonorable discharges. Hence, a former Army member did not acquire renewed rights to a reenlistment bonus and a savings deposit refund in 1979 on account of the upgrading of the characterization of his 1953 discharge from dishonorable to honorable conditions. His claim for a bonus is instead barred by the 6-year statute of limitations, since that claim accrued no later than the date of his 1953 discharge. No records to substantiate his claim for a savings deposit have been found.

3. If the Veterans Administration makes a determination that an individual is liable for the costs of benefits claimed and received, but actually improperly furnished, those costs become a debt to the United States collectible by setoff against sums due the individual. Therefore, amounts due a former Army member on

account of the upgrading of his military discharge were properly applied towards the satisfaction of a bill of collection issued by the Veterans Administration for the recoupment of benefit costs. Any disagreement the former Army member may have concerning the debt would be for consideration by the Veterans Administration, which has exclusive jurisdiction over veterans benefits.

Mr. Willie J. Shelton requests reconsideration of our Claims Group's settlement of his claims for amounts believed due on account of the action taken by the Secretary of the Army in 1979 to upgrade the characterization of his discharge from military service in 1953 from "dishonorable" to "general" (under honorable conditions).[1/] In light of the facts presented, and the applicable provisions of law, we sustain the earlier settlement of Mr. Shelton's claims.

Background

The records presented in this matter indicate that Mr. Shelton initially enlisted in the Army on March 26, 1948. He was honorably discharged on July 24, 1950, for the purpose of immediate reenlistment for a 3-year term of service. He was held over beyond the normal expiration of that reenlistment period, however, on charges that resulted in his trial by general court-martial. He pleaded guilty to these charges, and his sentence, as approved and ordered executed on December 11, 1953, was "to dishonorable discharge, forfeiture of all pay and allowances becoming due on and after 15 October 1953, and confinement at hard labor for one year."

The records also indicate Mr. Shelton was hospitalized at the Veterans Administration Center at Wood, Wisconsin, between July 15 and August 2, 1976. On October 6, 1976, the Veterans Administration issued a bill of collection to Mr. Shelton for $1,224, such amount representing a daily cost of $68 for his 18-day hospitalization. The collection

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1/ This decision is issued under 31 U.S.C. § 3702 and 4 C.F.R. § 32.1 at the request of the claimant, Mr. Shelton.

voucher contains this notation: "Presumed honorably discharged but subsequently found ineligible."

It further appears that in May 1979 the Secretary of the Army, acting through the Army Board for the Correction of Military Records upon Mr. Shelton's application, directed that Mr. Shelton be issued "a Certificate of General Discharge from the Army of the United States, dated 11 December 1953, in lieu of the dishonorable discharge now held by him."

Mr. Shelton subsequently filed claims with the Army Finance and Accounting Center for amounts believed due because of this upgrade in the character of his military discharge. He claimed a reenlistment bonus based on his reenlistment in 1950, and he claimed a mustering-out payment based on his discharge in 1953. In addition, he stated:

> "I also signed up on July 24, 1950, to put in $109 a month in the Soldiers Deposit account. $109 was taken out of my pay each month from July 24, 1950 to December 11, 1953."

He indicated the belief that these savings deposits had been withheld from him in 1953 at the time of his discharge, and he claimed entitlement to payment of these savings based on the upgrading of his discharge in 1979.

The Army Finance and Accounting Center referred the matter to our Office for settlement. Our Claims Group denied Mr. Shelton's claims for the reenlistment bonus and savings deposit refund, but allowed him a $300 credit on his claim for a mustering-out payment. That amount was not paid to him, however, and was instead applied towards the partial satisfaction of the $1,224 bill of collection issued by the Veterans Administration.

Mr. Shelton has asked for a review of that settlement of his claims, and he adds:

> "On 10/6/76, Wood VA Medical Center billed me $1,224 for 18 days of hospitalization and treatment. * * * However, because of the upgraded discharge I received in 1979

the offset should have been nullified and therefore my claim should have been honored.

"Here are my itemized claims:

"1 - $3,869, Soldiers Deposit Fund

"2 - Additional mustering-out-pay for my July 1950 honorable discharge

"3 - Re-enlistment bonus never received

"4 - Mustering-out-pay for my December 11, 1953 discharge * * *"

General Effect of Upgrading a Military Discharge

The Secretaries of the military and naval departments, acting through boards of civilians, are vested with broad statutory authority to change the military records of former service members. 10 U.S.C. § 1552. Generally, these changes can give rise to the accrual of new, previously non-cognizable claims for military pay and other pecuniary emoluments, as well as to claims for veterans benefits.

Our Office has jurisdiction to resolve administrative claims for military pay and other emoluments based on changes in a former service member's military records, under our general statutory responsibility to settle all claims against the United States except those which are otherwise specifically provided for by law. 31 U.S.C. § 3702. Consistent with rulings of the Federal courts, we have held that in cases where the military record is amended solely to show upgrading in the character of discharge to honorable, former service members are entitled only to the additional amounts they would have received had the initial discharge been under honorable conditions.[2/]

Alternatively, claims for veterans benefits that may arise as the result of the upgrading of a discharge or other

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2/ See Carter v. United States, 206 Ct. Cl. 61 (1975); and Daniel K. Toth, B-193417, February 16, 1979. See also 34 Comp. Gen. 95 (1954).

change in a military record are not within our jurisdiction. Rather, by specific provision of statute a decision of the Administrator of Veterans Affairs on any question of law or fact concerning a claim for veterans benefits is made "final and conclusive and no other official or any court of the United States shall have power or jurisdiction to review such decision." 38 U.S.C. § 211(a). Hence, we have no authority to change or reverse any decision of the Veterans Administration pertaining to a former service member's entitlement to veterans benefits.[3/] Further, we have no authority to review bills of collection for the recoupment of veterans benefits issued by the Veterans Administration in cases involving a change of military records, if such review would require our examination of an underlying benefit determination made by the Veterans Administration.[4/]

Claims for Mustering-Out Payments

A mustering-out payment for service members during the period of the Korean conflict was authorized by Title V of the Veterans' Readjustment Assistance Act of 1952, codified as 38 U.S.C. §§ 1011-1015 (1952 ed., repealed). Under that act, members of the Armed Forces engaged in active service on or after June 27, 1950, were eligible to receive a mustering-out payment when discharged from active service "under honorable conditions." 38 U.S.C. § 1011(a) (1952 ed., repealed). This mustering-out payment was authorized in a maximum amount of $300 at the time of final discharge or ultimate relief from active service. 38 U.S.C. § 1012 (1952 ed., repealed). Persons were ineligible to receive more than one mustering-out payment under the act. 38 U.S.C. § 1013 (1952 ed., repealed).

Under these provisions of statute, it appears that a mustering-out payment of $300 was withheld from Mr. Shelton in 1953 solely because he was discharged under less than

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3/ See, generally, Daniel K. Toth, B-193417, supra. Dewey G. Romans, Sr., B-189212, July 5, 1977; William E. Stewart, B-188041, April 22, 1977.

4/ See Lieutenant Colonel Carl F. Johnston, AUS, B-195129, April 28, 1980.

honorable conditions.[5]/ Hence, his eligibility for payment of that amount accrued in 1979 upon the upgrading of his discharge, and we conclude that he then became entitled to credit for that amount. And, as is indicated above, he has been credited with that amount, but it was applied to the bill of collection issued by the Veterans Administration for the charges due for his hospitalization. We may not allow an additional mustering-out payment now claimed based on his July 1950 discharge and reenlistment, however, since the statute did not authorize multiple mustering-out payments.

Claim for Reenlistment Bonus

Statutory law in effect between 1950 and 1953 authorized payment of a lump-sum reenlistment bonus of $40, $90, $160, $250, or $360 to service members upon their reenlistment for a period of 2, 3, 4, 5, or 6 years, respectively. 37 U.S.C. § 238 (1952 ed., repealed). For reenlistments that occurred during 1950, the bonus payments were made in full at the time of the reenlistment, and service members were entitled to retain the full amount of the bonus monies they received even if they subsequently failed to complete their full term of service creditably or were discharged under other than honorable conditions due to reasons of their misconduct.[6]/

Under the statutes governing reenlistment bonuses between 1950 and 1953, it thus appears that Mr. Shelton's court-martial and dishonorable discharge in 1953 could have had no effect on his entitlement to a reenlistment bonus. That is, his right to payment of the bonus accrued upon his reenlistment in 1950, and he was entitled to retain the

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5/ The upgrading of Mr. Shelton's discharge in 1979 did not change the fact of his conviction by general court-martial in 1953, nor did it alter that portion of his sentence requiring a forfeiture of all pay and allowances after October 15, 1953. The mustering-out payment was not subject to forfeiture as "pay and allowances" in court-martial proceedings, however, and was instead withheld for the sole reason of the dishonorable discharge assessed. See 34 Comp. Gen. 95, supra.

6/ See 33 Comp. Gen. 513 (1954).

bonus in the full amount notwithstanding his dishonorable discharge. Hence, no new rights to additional reenlistment bonus monies accrued to Mr. Shelton upon the upgrading of that discharge in 1979, since the character of his discharge from military service in 1953 had no bearing on his entitlement to receive and retain a bonus for his reenlistment in 1950.

We presume as a matter of administrative regularity that Mr. Shelton received the reenlistment bonus in 1950 to which he was entitled under the laws then in effect, even though he does not now recall receiving payment and any records which might conclusively resolve the actual fact of payment or nonpayment have apparently long since been destroyed. In any event, unlike his entitlement to a mustering-out payment, Mr. Shelton's entitlement to the reenlistment bonus first accrued in 1950 and was unaffected by the change in his records in 1979, so that we are barred by the 6-year statute of limitations applicable to claims presented to our Office from considering his claim for a bonus.7/

Claim for Refund of Savings Deposit

Section 906 of title 10, United States Code (1952 ed., repealed), provided that:

> "Any enlisted man of the Army may deposit his savings, in sums not less than $5, with whatever branch, office, or officers of the Army the Secretary of the Army may from time to time designate, who shall furnish him a deposit book, in which shall be entered the name of such branch, office, or officers and of the soldier, and the amount, date, and place of such deposit. Any amount heretofore or hereafter so deposited shall be held during such period of his service as may be prescribed by the Secretary of the Army; shall be accounted for in the same manner as

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7/ See 31 U.S.C. § 3702(b). See also 48 Comp. Gen. 235, 238 (1968); and compare Haislip v. United States, 152 Ct. Cl. 339 (1961), to similar effect concerning the 6-year limitation on claims against the United States filed in the Federal courts.

> other public funds; shall be deposited in the Treasury of the United States and kept as a separate fund, known as pay of the Army deposit fund, repayment of which to the enlisted man, or to his heirs or representatives, shall be made out of the fund created by said deposits; shall not be subject to forfeiture by sentence of court-martial, but shall be forfeited by desertion; * * *"

Consistent with the plain wording of this provision, we expressed the view in 1952 that since a forfeiture of deposits was authorized only in case of the desertion of the depositor, other acts of misconduct that may have been committed by a soldier could not serve as a basis for withholding a refund of deposits at the time of final discharge.[8]/

It does not appear that Mr. Shelton was charged with desertion, and therefore he became entitled to a full refund of any amounts he may have deposited as savings under this provision at the time of his final discharge in December 1953, notwithstanding his court-martial conviction on other charges and the characterization of his discharge at that time as dishonorable. Hence, no new or additional rights to a refund of savings deposits accrued to him on account of the upgrading of his discharge in 1979. No records have been found to substantiate Mr. Shelton's recollections concerning the withholding of a savings deposit in 1953, and the upgrading of his discharge in 1979 could not in any case have given rise to any new or additional entitlements in the matter. We are consequently unable to find any basis for allowing his claim for a soldier's deposit.

Veterans Administration Bill of Collection

As indicated, any question of law or fact concerning a claim for veterans benefits is within the exclusive jurisdiction of the Administrator of Veterans Affairs. If the Veterans Administration makes a determination that an individual is liable for the costs of benefits claimed and received, but actually improperly furnished, those costs become a debt to the United States which must be recovered

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[8]/ See 31 Comp. Gen. 562 (1952).

either directly from the individual or, if the individual is due other sums from the United States, by setoff from such sums.[9]/

In the present case, if Mr. Shelton disagrees with the validity or the amount of the Veterans Administration's $1,224 bill of collection, it is a matter he should address to the concerned Veterans Administration authorities. In the meantime, so long as the bill of collection remains outstanding, it is an item to be included in the settlement of his claims in this matter. We therefore conclude that the $300 mustering-out payment was properly applied towards the partial satisfaction of his debt.

Accordingly, we sustain our Claims Group's settlement in this matter.

for Comptroller General
of the United States

9/ See Lieutenant Colonel Carl F. Johnston, AUS, B-195129, supra (footnote 4). The Government's fundamental right of setoff is not subject to time limitations. See Collection of Debts, 58 Comp. Gen. 501 (1979).