



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Staff Sergeant Luarthur Cochran, USAFR

File: B-252140

Date: June 3, 1993

DIGEST

In the absence of a mutual mistake in numerical computation or similar undisputed error which remains undetected at the time of settlement, acceptance of settlement by Air Force member incident to administrative action to correct his military records bars pursuit of further claims, including a claim for an offset of interim civilian earnings, which were properly taken in any event.

DECISION

Staff Sergeant Luarthur Cochran, USAFR, requests reconsideration of our Claims Group's disallowance of his request for waiver of amounts deducted from the retroactive pay and allowances he received as a result of a correction of his military records. We sustain the Claims Group's settlement.

In December 1983, then SSgt. Cochran was discharged from the U.S. Air Force. In March 1986, the Air Force Board for Correction of Military Records voided the discharge and reinstated him to active duty through a correction of his records. The correction entitled him to retroactive payment of military pay and allowances which he would have earned during the time he was separated.

In July 1986, the Air Force Accounting and Finance Center determined that SSgt. Cochran was entitled to \$12,768.76 based on this correction of records. This amount represented his retroactive military pay and allowances, less \$18,351.51, the amount he had earned as a civilian during the 3 years he was separated from the service.

SSgt. Cochran contends that the deduction of \$18,351.51 to offset his interim civilian earnings was incorrect. He asserts that because an improper separation forced him to have to seek civilian employment, the Correction Board's subsequent reversal of his discharge should entitle him to receive full military pay for the period of separation.

We do not agree. First, SSgt. Cochran was clearly informed in the July 14, 1986, letter from the Finance Center

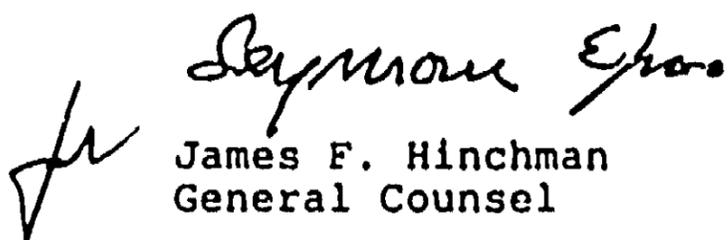
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forwarding him the check that acceptance of the settlement, evidenced by the cashing of the check, would constitute a complete release of any claim against the United States arising from the correction of records. The letter pointed out that if the member did not agree with the terms of the settlement, the check should not be cashed but returned with the reason the member felt the settlement was incorrect. SSgt. Cochran cashed the check. The longstanding rule in such cases is that in the absence of a mutual mistake in numerical computation or similar undisputed error which remains undetected at the time of settlement, acceptance of settlement by a member incident to administrative action to correct his military records bars pursuit of further claims by the member against the government. 57 Comp. Gen. 554 (1978).

Second, in any event, even if SSgt. Cochran had questioned the amount of the settlement before he cashed the check, he could not have avoided the deduction he questions. The Finance Center correctly computed the amount payable to SSgt. Cochran in accordance with our prior decisions and applicable Air Force regulations.

Air Force Regulation 31-3 (May 31, 1985) dealing with the Air Force Board for Correction of Military Records states at paragraph 25 that earnings received from civilian employment during any period for which active duty pay and allowances are payable will be deducted from the settlement. This regulation was based on 48 Comp. Gen. 580 (1969) in which we found that it would be appropriate to enact regulations providing for a set-off of interim earnings in a settlement resulting from a correction of records to be consistent with the practice of the Court of Claims (now Claims Court) where such a set-off was being taken following an action by a member for retroactive pay and allowances. The practice is based on the general principle that the member has a duty to mitigate the government's monetary obligations in such circumstances. See Craft v. United States, 589 F.2d 1057 (Ct. Cl. 1978) and 56 Comp. Gen. 587 (1977). It also reflects the view that the settlement should not unjustly enrich SSgt. Cochran by placing him in a better position financially than would have been the case had he not been discharged.

Accordingly, the settlement is final, and in the correct amount. The conclusion of the Claims Group is affirmed.


James F. Hinchman
General Counsel