DECISION

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

FILE: B-198159 DATE: February 17, 1981

MATTER OF: [redacted]

DIGEST: 1. The United States Supreme Court's opinion in United States v. Larionoff, 431 U.S. 864 (1977), concerning military reenlistment bonuses, did not alter the fundamental rules of law that (1) a service member's entitlement to military pay is governed by statute rather than ordinary contract principles, and (2) in the absence of specific statutory authority the Government is not liable for the negligent or erroneous acts of its agents; hence, the amount of any reenlistment bonus payable to a service member depends on the applicable statutes and regulations, and in no event can the bonus amount be established through private negotiation or contract between the member and his recruiter.

2. A Navy petty officer who reenlisted became entitled to a reenlistment bonus in the amount of $3,209.40, computed under the statutory provisions of 37 U.S.C. 308 (1976) and implementing service regulations, but a recruiting official miscalculated the amount of his bonus entitlement and entered the higher figure of $3,459.60 in his reenlistment agreement as the amount of the bonus payable to him. Such mistake may not serve as a basis for payment of a bonus to him in excess of $3,209.40, the amount authorized by statute and regulations.

This action is in response to a letter with enclosures, from Louis J. Frymire, Disbursing Officer, Navy Personnel Support Activity Detachment, Guantanamo Bay, Cuba, who requests an advance decision concerning the correct amount of the selective reenlistment bonus to be paid Petty Officer (OS3) [redacted]. The question is whether Petty Officer [redacted] should receive the selective reenlistment bonus amount agreed upon between him and the United States Navy recruiting officer at the time of his

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reenlistment on September 20, 1979 ($3,459.60), or the amount of the bonus to which he was entitled under Navy regulations ($3,209.40), a difference of $250.20. The request was forwarded to this Office by the Commander of the Navy Accounting and Finance Center after being assigned control number DO-N-1340 by the Department of Defense Military Pay and Allowance Committee.

We conclude that since the entitlement of service members to military pay and allowances, including reenlistment bonuses, depends upon statute and regulation and not on ordinary contract principles, Petty Officer [redacted] may not be paid the additional unauthorized bonus monies amounting to $250.20 promised to him in his reenlistment agreement. We find that this conclusion is consistent with and required by the United States Supreme Court's reasoning in United States v. Larionoff, 431 U.S. 864 (1977), which concerned promised bonuses in connection with reenlistments.

The records before us indicate that Petty Officer [redacted] initially enlisted in the Navy for 4 years in 1974. He was separated from active duty on September 22, 1978, upon the completion of his 4-year term of enlistment. After nearly a year's break in active service, he reenlisted for a second 4-year term of active duty on September 20, 1979. Under the terms of the written reenlistment agreement executed by him and a Navy recruiting officer, he was promised a reenlistment bonus in the amount of $3,459.60.

After his reenlistment and arrival at Guantanamo Bay, Navy disbursing officials there informed him that it appeared the recruiting officer had made a mistake when filling out the reenlistment agreement, and that in fact he was only entitled to a reenlistment bonus in the amount of $3,209.40. That lesser amount was then paid to him.

A question has arisen concerning the entitlement of Petty Officer [redacted] to have the additional bonus monies amounting to $250.20 which were promised to him in the reenlistment agreement. The Navy legal

assistance officer representing Petty Officer [redacted] interests in the matter suggests that the reenlistment agreement should properly be regarded as legal and binding with respect to the amount of the bonus promised. In that connection, it is suggested that even if the recruiter erred in figuring the correct amount of the bonus award, the agreement should nevertheless be considered valid and the Government should pay the additional amount, for the reason that ordinarily a principal is liable for the acts of its agent.

Section 308 of title 37, United States Code (1976), provides that under prescribed regulations a member of a uniformed service who is qualified in a military skill designated as critical and who meets certain other standards may be paid a bonus, not to exceed a stated maximum, if he reenlists or voluntarily extends his enlistment.

Implementing regulations governing bonus payments to Navy members reenlisting after a break in service are contained in Bureau of Naval Personnel Instruction 1133.28B, June 1, 1978, as amended. That administrative directive provides instructions and formulas for computing the reenlistment bonus of an eligible Navy veteran who reenlists more than 3 months after his last separation from active duty, with computations based on multiples of the member's basic pay at the time of such earlier discharge or release from service.

Under the provisions of statute and regulation cited, when Petty Officer [redacted] reenlisted in the Navy on September 20, 1979, he became entitled to a reenlistment bonus in an amount equal to 6 months' basic pay, computed on the basis of his basic pay rate at the time of his earlier separation from active duty on September 22, 1978. On September 22, 1978, he was serving in pay grade E-4, with over 3 but not over 4 years' creditable service, so that his basic pay rate was $534.90 per month. His reenlistment bonus entitlement under the applicable provisions of statute and regulation was thus $534.90 multiplied by 6, or $3,209.40.

However, it appears that when Petty Officer [redacted] reenlistment agreement was prepared in September 1979, the September 1978 monthly basic pay rate for a service member in pay grade E-4 with over 4 years' creditable service, $576.60, was mistakenly used as the basis for computing the bonus entitlement. The resulting calculation (6 x $576.60) produced the erroneous entry in the reenlistment agreement indicating entitlement to a bonus in the higher amount of $3,459.60.

In the case of United States v. Larionoff, supra, the Supreme Court expressed the opinion that because Congress intended to provide at the reenlistment decision point a promise of a reasonably certain and specific bonus for extending service in the Armed Forces, members who agreed to extend their enlistments at some future date were entitled by statute to bonuses determined according to the award level multiples in effect at the time they agreed to extend their enlistments, not the award level multiples in effect on the future date when the extension agreements became operative. However, the Supreme Court did not alter or amend the fundamental rule of law that a service member's entitlement to military pay and allowances is dependent upon a statutory right, and that contract principles have no place in any determination regarding a member's legal entitlement to military pay. See United States v. Larionoff, supra, at page 869, 431 U.S.; and 58 Comp. Gen. 282, 289 (1979). See also, generally, Bell v. United States, 366 U.S. 393, 401 (1961); Abbott v. United States, 200 Ct. Cl. 384 (1973), cert. denied 414 U.S. 1024 (1973); 56 Comp. Gen. 943 (1977); and other court opinions and Comptroller General decisions therein cited. Furthermore, the Supreme Court's opinion in the Larionoff case did not alter the longstanding rule that in the absence of specific statutory authority the United States is not liable for the negligent or erroneous acts of its officers, agents, or employees, even though committed in the performance of their official duties. See Federal Crop Insurance Corporation v. Merrill, 322 U.S. 380 (1947); Posey v. United States, 449 F. 2d 228, 234 (1971); Parker v. United States, 198 Ct. Cl. 661 (1972); and 56 Comp. Gen. 943, supra. Hence, when a service member reenlists in a critical military specialty, the amount of any reenlistment bonus payable to him is

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governed by the applicable provisions of statute and regulation rather than the terms of his reenlistment agreement or the promises of recruiting officials. In absolutely no event can the amount of a bonus be established through private negotiation or contract between a service member and his recruiter since the recruiter has no authority to offer a bonus in any amount other than that provided under the statute and regulations.

In the present case, therefore, Petty Officer [redacted] is entitled to a reenlistment bonus of $3,209.40, the amount authorized by statute and regulation, rather than $3,459.60, the amount erroneously entered in the documents of reenlistment by the recruiting officer. To any extent that Petty Officer [redacted] was misled or misinformed by the recruiting officer concerning his bonus entitlements, such misleading information could not in any event properly afford a legal basis for a payment from appropriated funds of a bonus to him in excess of the $3,209.40 authorized by statute and regulation.

Accordingly, Petty Officer [redacted] may not be paid the additional $250.20 here in question.

Milton J. Socolar

Acting Comptroller General
of the United States

1. GRATUITIES
Selective reenlistment bonus
Entitlement
Based on applicable law
Not contractual right

PAY
Entitlement bonus
Not a contractual right

2. GRATUITIES
Selective reenlistment bonus
Computation
Error in reenlistment agreement
Government's liability

AGENTS
Government
Government liability for negligent or erroneous acts
Military matters
Erroneous information regarding pay