



INGEST - MILITARY -

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

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B-176907

JAN 18 1973

Headquarters, Bangkok Detachment
U. S. Army Support Thailand
APO San Francisco 96346

Dear Sergeant

Further reference is made to your letter of June 23, 1972, in effect requesting reconsideration of the settlement of our Office dated April 15, 1970, which disallowed your claim for reimbursement of \$360 refunded to the Government for overpayment of reenlistment bonus. We also have your letter of November 7, 1972.

The record shows that you reenlisted on June 19, 1949, for an unspecified period of time and received a \$50 enlistment allowance. Thereafter you received anniversary payments totaling \$355 over a period of six years incident to that enlistment. On July 20, 1955, you reenlisted for four years and received a reenlistment bonus of \$936. When you reenlisted again on July 20, 1959, you received a reenlistment bonus of \$1,100 making a total of \$2,391 you received incident to the 1955 and 1959 enlistments and the anniversary payments incident to the 1949 enlistment.

The payment of reenlistment bonuses incident to reenlistments entered into on or after October 1, 1949 was authorized by section 207 of the Career Compensation Act of 1949, 63 Stat. 811, which provided that the total amount of such payments should not exceed \$1,440. The 1949 act was amended by the act of July 16, 1954, 68 Stat. 488, which added section 208, now codified as section 308, title 37, U.S. Code, and which now governs the payment of reenlistment bonuses. That section provides for payment of reenlistment bonuses computed on a different basis and generally in a greater amount than is provided in section 207.

The total amount of reenlistment bonus that may be paid to a member was limited by subsection 208(c) reading as follows:

"The cumulative amount which may be paid to a member under this section, or under this section and any other provision of law authorizing reenlistment bonuses, may not exceed \$2,000."

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37 U.S.C. 308(c)

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In view of such limitation the excess of \$391 was collected from you and your claim for refund of the amount of the anniversary payments was disallowed.

The basis for your request for reconsideration of the disallowance of your claim is that paragraph 10906c(5) of the Department of Defense Military Pay and Allowances Entitlements Manual provides as follows:

"(5) Amounts paid as enlistment allowances after 1 Oct 1949 are not included in the \$2000 cumulative amount limitation."

You contend that the amount you received after October 1, 1949, as anniversary payments for your reenlistment on June 19, 1949, constituted enlistment allowance payments which should not be included in the \$2,000 aggregate limitation.

At the time of your reenlistment on June 19, 1949, section 10 of the Pay Readjustment Act of 1942, as amended by section 4 of the Act of June 28, 1947, 61 Stat. 192, provided that, in addition to the enlistment allowance otherwise authorized, any person enlisting for an unspecified period of time should be paid the sum of \$50 upon completion of each year of service under such enlistment. That section of the 1942 act was repealed, however, effective October 1, 1949, by the Career Compensation Act of 1949, 63 Stat. 802, leaving no provision of law in effect for payment of such additional enlistment allowance to members who reenlisted for an indefinite period prior to the effective date of the 1949 act. To correct that situation, section 207 of the 1949 act was amended by the act of October 26, 1951, 65 Stat. 653, to read, in part, as follows, the underscored proviso having been added by the 1951 act:

"SEC. 207. (a) Members of the uniformed services who enlist under the conditions set forth in subsection (b) of this section within three months from the date of their discharge or separation, or within such lesser period of time as the Secretary concerned may determine from time to time, shall be paid a lump-sum reenlistment bonus of \$40, \$90, \$160, \$250, or \$360 upon enlistment for a period of two, three, four, five, or six years, respectively; and, upon enlistment for an unspecified period of time amounting to more than six years a lump sum reenlistment bonus of \$360 shall be paid, and, upon the completion of six years' enlisted service in such enlistment, for each year thereafter a lump sum payment of \$60 shall be made in advance, subject to the limitation that the total amount paid shall not exceed \$1,440:

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Provided, That persons in an enlistment for an unspecified period of time, entered into prior to October 1, 1949, shall be paid \$110 upon the first anniversary date of such enlistment subsequent to September 30, 1949, and \$60 upon each anniversary date thereafter, subject to the limitations that the total amount paid after October 1, 1949, shall not exceed \$1,440; * * *
(Underscoring supplied.)

It will be noted that section 10^x of the 1942 act provided, prior to its repeal effective October 1, 1949, for payment of reenlistment allowances incident to reenlistments entered into under the circumstances there specified, whereas sections 207^x and 208^x of the 1949 act, as amended, provides for reenlistment bonuses computed on a different basis and in different amounts incident to reenlistments entered into on or after October 1, 1949, the effective date of that act.

Since the anniversary payments provided for by the 1931 amendment to section 207^x of the 1949 act were provided as a part of the payments authorized by section 207(a)^x relating to reenlistment bonus payments, such anniversary payments also are regarded as reenlistment bonus payments within the contemplation of the \$2,000 aggregate limitation. See 34 Comp. Gen. 463^x (1955), copy enclosed.

Consequently, the anniversary payments you received were properly included in computing the total payments to you subject to the \$2,000 cumulative limitation and the settlement denying your claim is sustained.

It may be stated that section 207(d)^x of the 1949 act provides that a member who reenlists within three months after being discharged from an enlistment entered into prior to the date of enactment of that act shall be entitled to receive either (1) enlistment allowance in the amount (not exceeding \$300) and under the provisions of law in effect immediately prior to enactment of the 1949 act, or (2) reenlistment bonus under the provisions of that section, whichever is the greater amount. The provision in the pay manual which you cite would be applicable to enlistment allowances paid under that savings provision incident to reenlistments entered into after enactment of the 1949 act. 34 Comp. Gen. 715^x (1955).

Very truly yours,

PAUL G. DEMBLING

For the Comptroller General
of the United States

Enclosure