

DECISION

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

608

FILE: B-140972

DATE October 24, 1979

MATTER OF:

DIGEST:

1. An Army member's discharge absolutely terminates his entitlement to military pay and allowances, and a subsequent change in the character of the discharge does not affect the former member's status with respect to separation from service, nor does it create any right to military pay for periods after the date of discharge. Therefore, a former Army officer discharged under other than honorable conditions on February 9, 1951, gained no entitlement to active duty pay for periods after that date as the result of action taken in 1976 to upgrade the character of the discharge to one under honorable conditions (General).
2. An Army officer who was discharged under other than honorable conditions in February 1951, but who received an upgraded discharge under honorable conditions (General) in July 1976, did not thereby gain entitlement to monetary compensation either for the loss of military medical care or other benefits after February 1951.
3. If the character of a former service member's discharge is upgraded from other than honorable to honorable, the former member may gain entitlement to certain military pay and allowances he would have received at the time of his original discharge--such as payment for unused accrued leave--had that discharge been granted under honorable conditions, provided that sufficient documentation has survived to substantiate his entitlement.

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4. The claim of the widow of a former Army officer for his unused accrued military leave based on administrative action in 1976 to upgrade the character of his discharge to honorable must be denied, where his original discharge was granted under less than honorable conditions in 1951 and in the intervening years all records which might establish how many days of accrued leave, if any, he had at the time of his 1951 discharge were lost or destroyed.
5. The claim of the widow of an Army officer for mustering-out pay possibly due to him as the result of action taken in 1976 to upgrade the character of his 1951 discharge from less than honorable to honorable must be denied, where his surviving military records indicated he might have previously received mustering-out pay and his entitlement to additional payments could not be established.
6. Claims for veterans benefits which may arise as the result of an administrative upgrade of a former Army member's discharge from less than honorable to honorable are within the exclusive jurisdiction of the Veterans Administration. 38 U.S.C. 211(a) (1976).

requests reconsideration of the settlements made by our Claims Division on her claim for unpaid military pay and allowances believed due to her late husband, on account of action taken in 1976 to upgrade the discharge under other than honorable conditions he received from the United States Army in 1951, to a discharge under honorable conditions (General). In view of the facts presented and the applicable provisions of law we sustain the Claims Division's settlements.

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Effective February 9, 1951, _____, who was then serving on active duty with the Army in the grade of first lieutenant, was discharged under other than honorable conditions. _____ died on June 30, 1975. By letter dated July 26, 1976, the Adjutant General of the Army advised his widow, _____, that after reviewing conclusions of the Army Discharge Review Board, the Secretary of the Army had changed the character of his discharge to one under honorable conditions (General).

Thereafter, _____ filed a widow's claim dated December 5, 1977, with the Army Finance and Accounting Center for any unpaid military pay and allowances due to her late husband by reason of the upgrading of his discharge. Army finance and accounting authorities then obtained all the available pertinent information contained in surviving military records from the National Personnel Records Center, St. Louis, Missouri, and forwarded that information, together with _____ claim, to the Claims Division of this Office for adjudication in July 1978. In settlements issued in December 1978 and March 1979 by our Claims Division, _____ was paid 2 travel allowances due her husband in the amount of \$123.12 each. Those were the additional travel allowances _____ would have received under the laws and regulations in effect in 1951 for his personal travel, and also the travel of his dependents, from his place of discharge in Colorado to his home of record in Rhode Island if his discharge in 1951 had been under honorable conditions. Our Claims Division further advised _____ however, that her late husband's military pay and leave records had been destroyed in the intervening years since 1951, so that there was no evidence which might serve as a basis for any further monetary payments.

_____ has expressed disappointment and dissatisfaction with our Claims Division's settlements on her claim. In substance, she indicates that her late husband received many decorations and medals in World War II and intended to make Army service his career. She expresses the belief that the action taken in 1976 to upgrade the character of his discharge shows that his separation from

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the Army in 1951 was unjust. She suggests that her late husband was improperly deprived of military pay, allowances, medical care, and other benefits after February 1951, and that compensation is due on account of the loss of those payments and other benefits.

 additionally indicates her belief that her late husband was deprived of payments for unused accrued leave and mustering-out pay in 1951 because his discharge was under other than honorable conditions. She states that the Army should have records to verify this, and it is not her fault that the records were destroyed. She therefore suggests that she ought to be paid the maximum amounts that might possibly have been payable to him for unused accrued leave and mustering-out pay if his 1951 discharge had been granted under honorable conditions.

It is well established that a service member's discharge terminates his entitlement to pay and allowances. A subsequent change in the character of the discharge has no bearing on the fact of separation, and the former member does not become entitled to pay and allowances for the unexpired portion of his enlistment or term of service. ^{v.}
United States, 131 Ct. Cl. 228 (1955), cert. denied. 350 U.S. 888 (1955); 38 Comp. Gen. 523, 525 (1959); 43 Comp. Gen. 115 (1963); B-189212, July 5, 1977. In cases where the military record is amended solely to show an upgrade in the character of discharge to honorable, the former service member becomes entitled only to the additional military pay and allowances he would have received at the time of his initial discharge, had that initial discharge been issued under honorable conditions. ^{v.} United States, 206 Ct. Cl. 61 (1975); B-193635, January 17, 1979; B-193417, February 16, 1979.

Hence, may not be credited with pay and allowances for any period after his discharge from service on February 9, 1951, nor may we authorize payment for any loss of military medical care and other benefits after that date. Rather, credit is limited to the additional military pay and allowances would have received in February 1951 had he been discharged under honorable conditions at that time.

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As mentioned, payments have already been made to [redacted] for the additional travel allowances which would have been payable to her late husband upon his separation from service had his Army discharge in February 1951 been granted under honorable conditions.

In addition, the pertinent laws in effect in February 1951 provided that a service member discharged under honorable conditions was entitled to a lump-sum payment for any days of unused leave accumulated at the time of separation, but an individual discharged under other than honorable conditions forfeited that payment. 37 U.S.C. 33(d) (1946 ed., Supp. IV 1951). Also, title V of the Veterans' Readjustment Assistance Act of 1952, 66 Stat. 688, 38 U.S.C. 1011 et seq. (1952 ed.), authorized mustering-out pay in an amount of \$100 to \$300 to honorably discharged service members who were on active duty during the Korean conflict after June 26, 1950. Eligibility for that mustering-out pay was, however, made subject to several conditions, and one of those conditions precluded payment to certain persons who received monetary benefits under the Mustering-Out Payment Act of 1944. See 38 U.S.C. 1011(c) (1952 ed.).

38 USC note sec. 101

The records before us do not disclose whether [redacted] had any days of unused accrued leave at the time of his discharge in 1951. The surviving records do suggest that he may have been eligible for monetary benefits under the Mustering-Out Payment Act of 1944, although the records do not disclose whether he received those benefits. A search of military records has not produced any further information concerning [redacted] leave or mustering-out pay, and [redacted] does not have any documentation from her late husband's personal records which might shed further light on the matter. Apparently, all of those leave and pay records have been lost or destroyed in the intervening years since 1951.

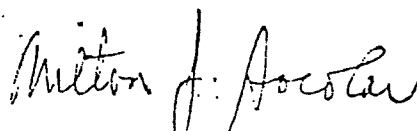
The burden of proof concerning the existence and non-payment of a valid claim against the Federal Government is on the person asserting the claim. Ordinarily, proof of the validity of a claim can be found in Government records.

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However, in situations such as this where long periods of time have passed and records which may prove or disprove the validity of a claim are unavailable, we have no alternative but to disallow the claim. See decisions B-183900, August 3, 1976; B-188041, April 22, 1977; and B-188669, June 2, 1977. Hence, payment for unused accrued leave upon discharge cannot be made to _____ in this case, since it is not possible to determine what amount, if any, might have been payable to _____ in February 1951 for that leave. Moreover, since it appears _____ may have previously received mustering-out pay under the Mustering-Out Payment Act of 1944, his eligibility for additional mustering-out pay under the provisions of the Veterans' Readjustment Assistance Act of 1952 remains so doubtful that the claim for that additional mustering-out pay must be denied.

Other federally administered benefits to which _____ may have become entitled as the result of the upgrade of her late husband's discharge from the Army to one under honorable conditions would appear to be those benefits within the exclusive jurisdiction of the Veterans Administration. This Office has no authority to determine entitlement to or direct payment of these veterans benefits to former service members or their survivors. See 38 U.S.C. 211(a) (1976). The question of entitlement to those benefits is therefore a matter which _____ should submit to the Veterans Administration.

Accordingly, the settlements of our Claims Division are sustained.



For the Comptroller General
of the United States