

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



B-177924

OCT 31 1973

Mr. N. E. Brenningstall, Chief ✓
Accounting and Finance Division
Through Deputy Assistant Comptroller
for Accounting and Finance (AF/ACFA)
Headquarters, United States Air Force
Washington, D.C. 20330

Dear Mr. Brenningstall:

Reference is made to your letter dated January 12, 1973 (file reference ACF), with attachments, requesting an advance decision as to the propriety of making payment of an amount equal to educational assistance allowances received from the Veterans Administration by Staff Sergeant _____, which was withheld from payment due him as a result of the correction of his military records. Your request was forwarded here by letter of January 29, 1973, from the Office of the Deputy Assistant Comptroller for Accounting and Finance, Headquarters United States Air Force (Department of Defense Military Pay and Allowance Committee Number DO-AF-1180).

You say that the Assistant Secretary of the Air Force, Manpower and Reserve Affairs, by memorandum dated June 30, 1971, directed that Sergeant _____ military records be corrected to show that he was not discharged on September 8, 1969, but that he continued on active duty until December 8, 1970, at which time he was honorably discharged under the provisions of Chapter 3, Section A, Air Force Manual 39-10 (Expiration of Term of Service).

For the period of additional active duty resulting from the correction of Sergeant _____ military records, it is indicated that there is a gross entitlement due him for pay and allowances in the sum of \$8,534.02, deductions amounting to \$3,143.49 and a net payable sum of \$5,390.53. Of the total amount deducted, \$1,173 represents educational assistance allowance payments at the rate of \$230 per month paid for the period from July 6, 1970, through December 8, 1970, by the Veterans Administration, presumably while he was attending school as a discharged veteran.

You are in doubt as to whether Veterans Administration educational assistance allowance payments based upon a discharged veteran status

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are required to be deducted from the active duty pay and allowances settlement, as you say would be required in the case of Veterans Administration compensation or pension payments made under similar circumstances.

As set forth in letter dated August 31, 1973, received from the Director, Education and Rehabilitation Service, Department of Veterans Benefits, Veterans Administration (copy enclosed), section 1682(a)(1) of Title 38, U.S.C., provides the statutory basis for the computation and payment by the Administrator of Veterans Affairs of educational assistance allowances for veterans pursuing programs of education under chapter 34 of that title. The rate payable under this section is that which shall be paid to veterans discharged from military service. Subsection (b) of section 1682, on the other hand, sets forth the statutory rate which shall be paid to servicemen on active duty who receive educational assistance allowances.

Sergeant apparently was paid educational assistance allowances for the period from July 6, 1970, through December 8, 1970, in the sum of \$1,173, at the veterans rate prescribed by 38 U.S.C. 1682(a)(1) based upon his original discharge instead of \$79.80 which the Veterans Administration has now determined to be due him as a serviceman, pursuant to 38 U.S.C. 1682(b). Therefore, it appears that Sergeant received \$1,093.20 (\$1,173-\$79.80) in educational assistance allowances as a discharged veteran to which he was not entitled in view of the correction of his records changing his status to that of serviceman during this period.

It is the view of the Veterans Administration that it is without authority to waive recovery of the \$1,093.20 overpayment. Consequently, this sum is deemed to be properly withheld from pay and allowances otherwise due Sergeant as a result of his corrected record. We would not object to the payment of the additional sum of \$79.80 from withheld funds, if otherwise proper.

Your question is answered accordingly, and the enclosed voucher for \$1,173 is retained here.

Sincerely yours,

PAUL G. DEMBLING

For the Comptroller General
 of the United States

Enclosure