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# DECISION

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

50866

FILE: B-181799 DATE: JUL 2 1975

MATTER OF: Department of Defense Military Pay and Allowance Committee Action No. 507 - Selective Reenlistment Bonus

DIGEST:

1. Service member who, within three months of the expiration of his current enlistment or extension thereof, is discharged pursuant to the authority of Secretary concerned under 10 U.S.C. 1171 (1970), where such discharge is for the sole purpose of reenlisting, may not have that unexpired term of enlistment or extension thereof considered as "additional obligated service" for the purpose of determining the multiplier for Selective Reenlistment Bonus (SRB) computation under 37 U.S.C. 308 (1970), as amended by Public Law 93-277, May 10, 1974, 88 Stat. 119.

2. The SRB entitlement provided for in 37 U.S.C. 308, as amended, may not be computed by using as the multiplier, the years, months and days of additional obligated service because that section clearly and unambiguously limits that multiplier to "the number of years, or the monthly fractions thereof, of additional obligated service."

3. For the purpose of computing the SRB under 37 U.S.C. 308, as amended, a fraction of a month of additional obligated service may not be counted as a full month in determining the monthly fractions of a year because, unlike similar statutes where specific authorization to do so is provided therein, 37 U.S.C. 308, as amended, contains no authorization to permit fractions of months to be counted as whole months.

This action is in response to a letter from the Assistant Secretary of Defense (Comptroller), requesting an advance decision

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concerning the computation of the Selective Reenlistment Bonus (SRB) entitlement under the provisions of 37 U.S.C. 308 (1970), as amended by section 2(1) of Public Law 93-277, approved May 10, 1974, 88 Stat. 119. The specific questions and a discussion of each are contained in Department of Defense Military Pay and Allowance Committee Action No. 507, which was enclosed with the request.

Four questions are presented in the Committee Action, one of which is as follows:

> "* * * may a member who, within three months before the expiration of the term of his enlistment or extended enlistment, is discharged for the purpose of reenlisting count the full term of his new enlistment as additional obligated service for the purpose of (SRB) computation under 37 U.S.C. 308, as revised by PL 93-277, 10 May 1974?"

The discussion in the Committee Action states that 10 U.S.C. 1171 (1970) provides that a member who is discharged within three months before the expiration of the term of his enlistment or extended enlistment, is entitled to all the benefits which would have accrued if he had completed his enlistment or extended enlistment, except for the pay and allowances for the period not served. It is also stated that 10 U.S.C. 1171 seems to dictate an affirmative answer to this question; however, doubt arises because it appears that Congress, in enacting the SRB, intended that the SRB not be paid for any period for which a member was already committed to serve.

Section 1171 of title 10, United States Code, provides in pertinent part as follows:

> "Under regulations prescribed by the Secretary concerned and approved by the President, any regular enlisted member of an armed force may be discharged within three months before the expiration of the term of his enlistment or extended enlistment. * * *"

Subsection 308(a) of title 37, United States Code, provides that an SRB is to be paid to an otherwise qualified member who reenlists or voluntarily extends his then current enlistment and is to be computed by using a multiplier measured by the number of years, or monthly fractions thereof, of "additional obligated service."

In general, when a person is discharged, his service obligation under his then current enlistment period terminates effective that date for all purposes. If he reenlists thereafter for any period, such period would clearly constitute "additional obligated service" within the meaning of 37 U.S.C. 308(a). However, when a member's discharge is approved specifically for the purpose of his immediate reenlistment, such as under paragraph 5-10 of Army Regulation 635-200 (change 41, July 25, 1973), we do not consider that the former obligation is terminated. In such a situation, the balance of the member's then current enlistment or extension of that enlistment would remain as a period of existing obligated service for the purpose of 37 U.S.C. 308(a) and if he is "discharged for the purpose of immediate reenlistment," only the difference between the remainder of the existing obligated service and the term of the reenlistment may be considered as "additional obligated service" for the purposes of computing the SRB.

Therefore, while it is evident that the Secretary of Defense has the authority under 10 U.S.C. 1171 to unconditionally discharge a member within three months of the expiration of his enlistment or extended enlistment, it is our view that if the discharge afforded the member is for the purpose of immediate reenlistment, then the unexpired term of his then current enlistment or extension thereof may not be considered as "additional obligated service" for purposes of computing an SRB.

Accordingly, this question is answered in the negative.

The other three questions presented in the Committee Action are as follows:

"1. May Selective Reenlistment Bonus (SRB) entitlement under 37 U.S.C. 308, as revised by PL 93-277, 10 May 1974, be computed by using, as the multiplier, the years, months and days of additional obligated service?

"2. If the answer to question 1 is negative, may 15 or more days of additional obligated service be counted as a full month in determining monthly fractions of a year for SRB computation under 37 U.S.C. 308, as revised by PL 93-277, 10 May 1974?

"3. If the answer to question 2 is affirmative, may any partial month of additional obligated service be counted as a full month for such bonus computation?"

The Committee Action states with regard to the first question quoted above, that 37 U.S.C. 308(a), provides that the number of years, or the monthly fractions thereof, of additional obligated service will be used as a multiplier in computing the amount of the SRB payable. On the other hand, 37 U.S.C. 308(d) provides for recoupment of the SRB, when recoupment is required, in terms of the "percentage of the SRB that the unexpired part of his enlistment is to the total enlistment period for which the bonus was paid." The Committee Action indicates that this requirement calls for recoupment on a daily basis. However, recognizing that payment of the SRB computed on a daily basis may be prohibited by the provisions of 37 U.S.C. 308(a), the Committee Action points out that since recoupment is on a daily basis, it seems logical and equitable that payment should also be on a daily basis.

Subsection 308(a) of title 37, United States Code, as amended by Public Law 93-277, supra, provides in pertinent part that a member of the uniformed services who meets the requirements of subsection (1) through (4):

"may be paid a bonus, not to exceed six months of the basic pay to which he was entitled at the time of his discharge or release, multiplied by the number of years, or the monthly fractions thereof, of additional obligated service, not to exceed six years, or $15,000, whichever is the lesser amount. * * *"

In this regard, subsection 308(d) of the same title provides that:

"A member who voluntarily, or because of his misconduct, does not complete the term of enlistment for which a bonus was paid to him under this section shall refund that percentage of the bonus that the unexpired part of his enlistment is of the total enlistment period for which the bonus was paid."

Under the quoted provisions, basic entitlement to an SRB arises only upon the member's reenlistment or extension of his then current enlistment for a period of at least three years. That subsection also provides for the computation of the bonus on the basis of "the number of years, or monthly fractions thereof, of additional obligated service." Thus, a member who is discharged prior to the expiration of his term of service for the purpose of immediate reenlistment and who reenlists for a period of three years would be qualified for the SRB. And, computation of that bonus would be based only on that service time which the member voluntarily obligated himself to serve beyond the expiration date of his then current enlistment or extension thereof. However, since we find no statutory basis for interpreting the words "years, or monthly fractions thereof" as permitting computation on a daily basis, the first question quoted above is answered in the negative.

It is to be noted that in a number of instances, the period of additional obligated service for which an SRB is to be computed will involve service not evenly divided into years and months. Thus, if a member's additional obligated service includes a number of days which cannot be counted because of the limitation contained in section 308(a), then for the purposes of recoupment of the bonus, it would not be inappropriate to view the period of enlistment for which a bonus is paid as being only the years and months of such service, excluding the days for which a bonus was not paid. Further, the unexpired period of enlistment for which the bonus was paid may be considered as not including the days excluded from the bonus computation and that such additional days could be considered as the final days of the full enlistment or extension. We believe that computation of bonuses and recoupment as indicated above would not be inconsistent with the purpose of the law and avoid the inequitable results referred to in the Committee Action.

The second question presented is whether 15 or more days of additional obligated service may be counted as a full month in determining monthly fractions of a year for purposes of the SRB computation. The Committee Action states that if daily fractions of a year are not authorized, perhaps rounding of fractions of a month offers the next most equitable approach to computing the amount of SRB payments; otherwise, payments would be based only on full months of additional obligated service. The Committee

Action also states that the restriction of the multiplier to full months of additional obligated service and the disregarding of all fractions of a month could deprive a member of SRB compensation for from 1 to 29 days of additional obligated service.

The Committee Action further states that if 15 or more days of additional obligated service counted as a full month for SRB computation, some members would receive extra SRB compensation while others still would be deprived of SRB compensation for from 1 to 14 days of additional obligated service. While the Committee Action expresses the view that the Government should "break even" if this method is used, it points out that there appears to be no precedent for the counting of fractions of a month as a full month in the computation of any type of military compensation, but that there is precedent for counting fractions of a year as a whole year in the computation of military compensation, e.g., in determining the multiplier for computation of readjustment pay authorized by 10 U.S.C. 687, a part of a year that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded.

Subsection 687(a) of title 10, United States Code (1970), which authorizes a readjustment payment upon involuntary release from active duty, provides in pertinent part as follows:

> "* * * For purposes of this subsection—
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> * * * * *
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> "(2) a part of a year that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded * * *."

Unlike 10 U.S.C. 687(a), which specifically authorizes counting fractions of years as whole years in certain circumstances, 37 U.S.C. 308, as amended, makes no provision for counting fractions of months as whole months, nor is there anything in the legislative history of Public Law 93-277, supra, to indicate that such a counting was intended. In the circumstances, it is our view that in the absence of specific statutory authority so permitting,

fractions of months may not be counted as whole months for the purpose of computing an SRB. The second question quoted above is answered in the negative, and in view thereof, the third question requires no answer.

R.F. KELLER

Deputy Comptroller General
of the United States