



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548



B-191750

OFFICE OF GENERAL COUNSEL

Released

IN REPLY
REFER TO: B-191750

MAY 26 1978

Dear

Reference is made to your letter of April 13, 1978, with enclosures, in which you request our comments and views regarding the applicability of Comptroller General's decision 52 Comp. Gen. 429 (1973) to your right to withdraw waiver of your retired pay when your military service was used for Civil Service retirement computation purposes.

The material enclosed with your letter indicates that in June 1976, when you were approximately 60-1/2 years old, you retired from the Federal Civil Service. At that time you apparently had 20 years and 8 months military service for which you had been receiving retired pay, which you combined with 17-1/2 years of civil service time for annuity purposes and waived receipt of military retired pay.

You indicate that before you retired from the Civil Service you sought information as to whether, in the event you waived receipt of military retired pay for Civil Service annuity purposes you could withdraw waiver at age 62 and receive an annuity based only on your civil service employment. You indicate that based on an affirmative answer by the Civilian Personnel Office where you were employed and an article which you read in the "Air Force Times," you executed the waiver of retired pay and retired from the Federal Civil Service with an immediate annuity.

You indicate further that upon reaching age 62 you attempted to withdraw your waiver since it appeared to be to your advantage to do so. However, it is indicated that the Civil Service Commission informed you that you could not do so. Further, a similar response was received from the Department of the Air Force, based upon our decision 52 Comp. Gen. 429, supra.

You now question the applicability of that decision since you assert that you sought out the best possible reliable advice from

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sources available to you before making your election and seek our views on the matter.

An official decision will not be rendered at your request on the question presented. However, the following comments may be helpful to you.

In decisions 50 Comp. Gen. 80 (1970) and 52 Comp. Gen. 429 (1973), and the prior decisions cited therein the Comptroller General considered situations involving the legal effect of the action by an individual, entitled to retired pay from a military service, who waives that retired pay to increase the service used in the computation of his Civil Service annuity. The distinction was made between an individual who has already established the minimum requisite of age and service needed to receive an immediate Civil Service annuity and an individual who waived retired pay in order to qualify or become eligible for an immediate Civil Service annuity.

In those decisions, we concluded that where an individual waives military retired pay in order to simply increase the amount of his Civil Service annuity after he has independently established his right to such annuity, he may withdraw that military retired pay waiver at a later date and receive a reduced Civil Service annuity based on his actual civilian service. However, where an individual waives military retired pay for the purpose of establishing basic eligibility for an immediate Civil Service annuity prior to his attaining the otherwise requisite combination of age and civilian service, waiver of his military retired pay may not be withdrawn since this action would, in effect, allow him dual benefits.

Under the provisions of 5 U.S.C. 8336, the combination of age and years of civilian service which would permit an individual to voluntarily retire from the Federal Civil Service and receive an immediate annuity are as follows:

Age 62	-	5 years of service
Age 60	-	20 years of service
Age 55	-	30 years of service

Thus, it would appear that you did not meet the requisite combination of age and years of service to independently retire from the Civil

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Service and receive an immediate annuity. If that was the situation, then in order to retire from the Civil Service at that time, you had to use your military service time to meet these minimum eligibility requirements.

While you say that you made your decision based on the best information available to you, we are unaware of any legal basis upon which an individual who waived military retired pay for this purpose could have it withdrawn or voided because of mistake, error or improper information.

In this regard it is our understanding that a few years of military service time may not be "borrowed" for this purpose, but that military service must be used on an all or none basis.

We trust this information will be of assistance to you.

Sincerely yours,

Edwin J.

Edwin J. Monsma
Assistant General Counsel