



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

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OFFICE OF GENERAL COUNSEL

JUL 1 1981

B-199536

Mr. Carl D. Phillips
702 Boundary S.E.
Olympia, Washington 98501

Dear Mr. Phillips:

Reference is made to the claim you submitted to our Office in January 1980 in which you suggested that you were underpaid by the Government incident to your service as a lieutenant in the United States Coast Guard from July 5, 1974, through November 13, 1978. That claim was also filed in the United States Court of Claims in June 1980 (Carl D. Phillips v. United States, Ct. Cl. No. 328-80C).

You say that from 1959 to 1965 you completed 6 years of active and inactive service with the U.S. Navy. Thereafter, in June 1974 you were graduated from law school, and on July 5, 1974, you accepted an officer's appointment to become a law specialist with the rank of lieutenant in the U.S. Coast Guard Reserve. On August 4, 1974, you reported for active Coast Guard service. You then served on extended active duty during the next 4 years until August 3, 1978, and you also performed a 2-week tour of active duty between November 1 and 13, 1978. You suggest that you were underpaid by the Coast Guard between July 5, 1974, and November 13, 1978, in two different respects.

First, you indicate that the Coast Guard gave you no military pay and allowances for the period from July 5 through August 3, 1974, i.e., from the time you accepted your Reserve officer's appointment to the time you reported for active duty. However, when the appointment was offered to you, the Commandant of the Coast Guard in a letter stated, "Pay and allowances accrue from the date of acceptance and oath of office." You believe that as a matter of law this constituted a contractual offer which became a binding agreement obligating the Coast Guard to commence immediate payment of military pay and allowances to you upon your acceptance of the appointment on July 5, 1974. You suggest that the Coast Guard's failure to give you pay and allowances for the period July 5-August 3, 1974, constituted a breach of contract, and you should therefore be awarded the pay and allowances improperly withheld from you during that period.

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Second, you indicate that, for purposes of determining longevity of service credit for the amount of monthly pay and allowances you were entitled to receive while on active duty, the Coast Guard credited you as of August 4, 1974, with your 6 years of prior active and inactive service with the Navy between 1959 and 1965, and also with 1 month of inactive Coast Guard service for the period from July 5 through August 3, 1974. You believe that as a matter of law you were, in addition, entitled to 3 years' longevity of service credit for pay purposes under 14 U.S.C. 773 by virtue of your designation as a law specialist of the Coast Guard Reserve. You suggest that the Coast Guard's failure to give you that additional 3 years' service credit constituted a breach of contract and caused you to be improperly underpaid throughout the period July 5, 1974, through November 13, 1978. You therefore ask for an award of the extra amount of pay and allowances you would have received during that period if you had been given the additional 3 years' service credit.

You initially submitted your claim to our Office in January 1980, and at that time we referred the matter to the Coast Guard Finance Office at Olympia, Washington, for resolution. Since then, you have questioned why this was done and why a final administrative decision of the Comptroller General has never been issued on your claim.

The General Accounting Office under 31 U.S.C. 71 is given broad statutory responsibility for the administrative settlement of all claims brought by or against the Government. Regulations concerning claims settlement procedures which have been issued pursuant to that statute by the Comptroller General, as head of the General Accounting Office, are contained in 4 C.F.R. chapter 1, subchapter C, copy enclosed. Under those regulations, an administrative claim against the Government filed in our Office by an individual claimant is routinely recorded and then referred to the concerned Federal agency for disposition. A claim that cannot be satisfactorily resolved for any reason by the agency is transmitted back to our Office with an administrative report for settlement by our Claims Division. In the event the claimant disagrees with such settlement, the matter is then reconsidered anew within our Office, and a final administrative decision by the Comptroller General on the claim may then be issued.

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When we received your claim in January 1980, we forwarded it to the Coast Guard for disposition in accordance with those established claims settlement procedures. We had heard nothing further about the matter from the Coast Guard when, in June 1980, you filed the same claim in the United States Court of Claims.

A claimant need not exhaust his administrative remedies in the General Accounting Office before seeking judicial relief in the Court of Claims. Iran National Airlines Corp. v. United States, 175 Ct. Cl. 504 (1966). Moreover, it has long been the policy of the Comptroller General not to settle cases pending litigation in the courts. See, e.g., 58 Comp. Gen. 282 (1979). Consequently, all administrative proceedings in your case were superseded when you filed suit in the Court of Claims in June 1980. We indicated to the concerned Department of Justice officials at that time that we would not issue an administrative settlement, or otherwise intervene or interfere in your case, while the matter was pending litigation before the Court.

However, it has been brought to our attention that a stay of proceedings has been granted by the Court in order to allow you to seek an administrative ruling from our Office on your claim. Although the Comptroller General has and will issue rulings in pending cases in which a stay in proceeding has been ordered for that purpose, we do not find your case to be appropriate for that procedure. This is so because an analysis of your claim and the applicable law and precedent reveals no legal basis for allowance. In the circumstance we believe it is a more appropriate procedure to provide you with the following informal analysis of your claim.

It is a well-established and fundamental rule that a service member's entitlement to military pay and allowances is completely dependent upon a statutory right, and the laws governing private employment contracts have no place whatever in any determination regarding a member's legal entitlement to military pay. See United States v. Larionoff, 431 U.S. 864, 869 (1977); Bell v. United States, 366 U.S. 393, 401 (1961); Abbott v. United States, 200 Ct. Cl. 384 (1973), cert. denied, 414 U.S. 1024 (1973); 56 Comp. Gen. 943 (1977). Therefore, it appears that your entitlement to pay and allowances from the Coast Guard would be a matter for determination under the

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applicable provisions of statutory law, and could not be based on any private contract or agreement you believe you may have entered into with the Coast Guard or its Commandant.

With respect to your claim for military pay and allowances for the period from July 5 through August 3, 1974, we note that you have not indicated you were on active duty or performing full-time Reserve training duty at any time during that period. By statute, military basic pay and allowances are payable only to service members on active duty or full-time Reserve training duty. See 37 U.S.C. 204, 402, and 403. Thus, as a general rule a Reserve member is not entitled to active duty pay and allowances until the date of necessary compliance with orders directing him to perform active duty. See 52 Comp. Gen. 482, 486 (1973). Since you say you were not ordered to active duty before August 4, 1974, you have not alleged facts which, if true, would entitle you by statute to military pay and allowances for the period July 5-August 3, 1974. As indicated, you could have no contractual right to such pay and allowances; further, a legal right to pay and allowances for that period could not arise from any erroneous promises or information given to you by Coast Guard officials, since the United States is not liable for the negligent or erroneous acts of its agents. Federal Crop Insurance Corporation v. Merrill, 322 U.S. 380 (1947); Parker v. United States, 198 Ct. Cl. 661 (1972). Hence, it appears that you have not presented a claim upon which any payment may be granted under the law for the active duty military pay and allowances believed due for the period from July 5 through August 3, 1974, when you indicate you were in an inactive Reserve status.

With respect to your claim for extra active duty pay and allowances for the years 1974-1978 based on additional service credit you believe you should have received as a law specialist, as you have noted 14 U.S.C. 773 does provide in part that:

"Upon appointment as a Coast Guard Reserve officer * * * [a] person * * * appointed for the purpose of or with a view to assignment or designation as a Law Specialist of the Coast Guard Reserve shall, for purposes of this subchapter

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only, be credited with a minimum amount of service in an active status of three years * * *." (Our emphasis added.)

In decision B-167666, August 22, 1969, copy enclosed, the Comptroller General held that the constructive service credit authorized by that provision of law may not be counted for longevity of service purposes in the computation of basic pay of a Coast Guard law specialist.

Similar statutory provisions give 3 years of service credit to law school graduates appointed as Reserve officers to serve as law specialists and judge advocates in the Army, Navy, Marine Corps, and Air Force. See 10 U.S.C. 3353, 5600, and 8353. Those provisions of law simply operate to place such legal officers 3 years ahead in rank of other officers on the promotion list, and they do not give legal officers an additional 3 years' credit for longevity of service purposes. Cowan v. United States, 161 Ct. Cl. 739 (1963); 44 Comp. Gen. 764 (1965).

Evidently, you were given the 3-year service credit authorized by 14 U.S.C. 773, since you indicate you were given an initial Coast Guard appointment as an officer with the rank and pay grade of lieutenant, 0-3, rather than ensign, 0-1. However, as is pointed out in the August 22, 1969 decision, separate provisions of law contained in title 37 of the United States Code--specifically 37 U.S.C. 205--govern the computation of years of service to be credited to a member of a uniformed service for purposes of calculating his pay entitlements. Under 37 U.S.C. 205(a)(1) and (2) a member is entitled to longevity of service credit for his previous active and inactive Reserve service, but no provision of 37 U.S.C. 205 authorizes any special additional longevity credit to be given to a member designated as a law specialist or judge advocate in the uniformed services by virtue of that designation. Hence, it appears that under the applicable statutes you were not entitled to an extra 3 years' longevity of service credit by virtue of your designation as a Coast Guard law specialist.

We trust this will serve the purpose of your recent inquiries concerning the status of your claim in our Office, and we regret that we were unable to furnish you with more favorable advice or information.

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A copy of this letter is being sent to the Department of Justice.

Sincerely yours,

~~Edwin J. Monsma~~

Edwin J. Monsma
Assistant General Counsel

Enclosures - 2

cc: Mr. Steven J. Riegel
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