



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Captain Larry J. Haynes, USMCR - Separation Pay -
Interservice Transfer

File: B-227737

Date: October 4, 1988

DIGEST

A Marine Corps Reserve officer on active duty for 5 years or more who, upon involuntary separation, would be entitled to receive separation pay, is not entitled to such pay where he was transferred to the Naval Reserve under 10 U.S.C. § 716 without a break in service. In regard to entitlement to pay and allowances, his military status is not considered to have been interrupted, but rather he is considered at all times to have remained on active duty.

DECISION

Major K. H. Schultz, Disbursing Officer, Marine Corps Finance Center, requests an advance decision whether former Captain Larry J. Haynes, U.S. Marine Corps Reserve, was entitled to receive separation pay upon his interservice transfer from the Marine Corps Reserve to the Naval Reserve as an officer. As will be explained below, former Captain Haynes is not entitled to receive separation pay.^{1/}

BACKGROUND

Following his failure to be selected for placement in the Regular Marine Corps, Captain Haynes unconditionally requested to remain on active duty in the Marine Corps Reserve. His request was denied. He then requested an interservice transfer to the Naval Reserve pursuant to 10 U.S.C. § 716, and that request was granted.

On March 15, 1987, he was separated from the Marine Corps, and on March 16, 1987, he entered on active duty as a

^{1/} The request for decision was forwarded through the Department of Defense Military Pay and Allowance Committee which assigned it control number DO-MC-1477.

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lieutenant in the Naval Reserve, a rank comparable to that of captain in the Marine Corps. The disbursing officer asks us whether former Captain Haynes is entitled to receive separation pay.

OPINION

Separation pay is a payment of between \$15,000 and \$30,000 for members of the armed services who are "discharged or released from active duty" involuntarily after completing 5 years of service but prior to becoming entitled to retired pay. See 62 Comp. Gen. 174, 175 (1983). The Marine Corps suggests that while Captain Haynes apparently satisfies the statutory requirement for separation pay,^{2/} he is not entitled to this pecuniary benefit since he did not re-enter civilian life, the purpose of such pay being to ease the transition to civilian life. We agree with the Marine Corps conclusion that Captain Haynes may not receive separation pay; however, we do so because of the unique nature of the interservice transfer under 10 U.S.C. § 716 which he received.

Under 10 U.S.C. § 716, notwithstanding any other provision of law, the President, with the consent of the officer involved, may transfer any commissioned officer of a uniformed service to, and appoint him in, another uniformed service. In another context, in deciding the pay and allowances inuring to an officer of the Marine Reserve who transferred to the Naval Reserve under 10 U.S.C. § 716, as is the case here, we held that the officer's service as a member of the uniformed services was never effectively terminated at any point during his interservice transfer. 41 Comp. Gen. 331 (1961).

Consistent with our conclusion above is Department of Defense Directive No. 1300.4 (April 2, 1984), entitled "Inter-Service Transfer of Commissioned Officers," which implements 10 U.S.C. § 716. This directive states in paragraph E-5:

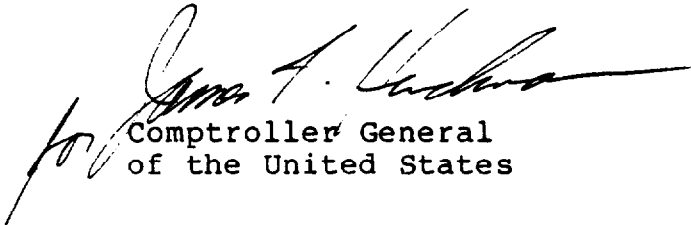
"If the request for transfer has received final approval, termination of current commission and

^{2/} Captain Haynes actually may elect separation pay under the current law, 10 U.S.C. § 1174, or readjustment pay under a prior law, 10 U.S.C. § 676 (1976). See 62 Comp. Gen., supra, at 175. We have been advised that he has elected separation pay as being of greater benefit; in any event the eligibility criteria for either type of pay is identical with only the amount of the entitlement differing.

reappointment in the gaining Uniformed Service shall be accomplished by the Departments concerned without interruption of the continuity of the officer's total service." (Emphasis added.)

Accordingly, since for purposes of pay and allowances Captain Haynes' interservice transfer did not involve an interruption of military status, he has not been given a release from active duty and is not entitled to receive separation pay. He remained in an active duty status at all times as regards pay and allowances and effectively had not been involuntarily separated thereby precluding any entitlement to separation pay.

In reaching our decision of today, we have considered 37 Comp. Gen. 357 (1957), wherein we held that under a predecessor statute to 10 U.S.C. § 1174 authorizing readjustment pay a member who was involuntarily released from active duty and enlisted in a Regular component or entered on active duty as a Regular or Reserve officer in the same or another military service on the day following his release could receive readjustment pay. We hold that 37 Comp. Gen. 357 is inapplicable to a member who receives an interservice transfer under 10 U.S.C. § 716, since under that section there is no interruption in service.


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