



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Theodore W. Parsons, Jr.

File: B-238153

Date: July 3, 1990

DIGEST

A former regular officer who is dropped from the rolls of the Air Force pursuant to 10 U.S.C. § 1161(b) may not be paid for accrued leave under 37 U.S.C. § 501 since that statute provides for payment of accrued leave only to officers who are discharged under honorable conditions.

DECISION

The question before us is whether a regular officer of the Air Force who is dropped from the rolls of the Air Force is entitled to payment for accrued leave to his credit at the time he is dropped from the rolls. For the following reasons payment is not authorized.

Theodore W. Parsons, Jr., a regular officer of the Air Force on active duty with 23 years of active service was convicted of a felony in 1986 and incarcerated in a state penitentiary. Subsequently, he was dropped from the rolls of the Air Force pursuant to 10 U.S.C. § 1161(b). He now claims entitlement to payment for accrued leave to his credit at the time he was dropped from the rolls.

Section 1161(b) of title 10, United States Code, provides that the President may drop from the rolls of an armed force an officer who has been absent without authority for 3 months or who is sentenced to confinement in a federal or state penitentiary or correction institution after having been found guilty of an offense by a court other than a court-martial and whose sentence has become final.

Section 501 of title 37, United State Code, authorizes payment to a member for accrued leave to his credit at the time of his discharge. Discharge in the case of an officer is defined in the law as separation or release from active duty under honorable conditions. Section 501 specifies that discharge under other than honorable conditions requires forfeiture of all accrued leave at the time of discharge.

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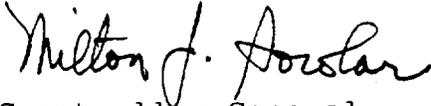
The Department of Defense Military Pay and Allowance Entitlement Manual (DODPM) sets forth conditions under which payment for accrued leave may or may not be made. The regulations provide that an officer with less than 6 months service who is dropped from the rolls is not entitled to a payment for accrued leave. DODPM para. 40401c(2)(b). The regulations are silent concerning whether payment may be made to an officer with over 6 months service who is dropped from the rolls. However, as discussed below, it is our opinion that officers with more than 6 months service who are dropped from the rolls likewise are not entitled to payment for accrued leave in view of the requirement of 37 U.S.C. § 501 that entitlement is conditioned on discharge under honorable conditions.

Neither 10 U.S.C. § 1161(b) nor the regulations assign any character of service to be attached when an individual is dropped from the rolls as occurs in the usual situation when an individual is discharged under honorable or other than honorable conditions. However, 37 U.S.C. § 501 only authorizes payment for accrued leave to officers who have been discharged under honorable conditions. Accordingly, since an officer who is dropped from the rolls has not received a discharge under honorable conditions, no accrued leave entitlement arises.

Additionally, we note that in a similar statute which provides limitations on the separation of reserves the Congress has dealt with the subject when a reserve is dropped from the rolls. Section 1163(b) of title 10, provides that the President or the Secretary concerned may drop any reserve from the rolls in the same situations that are set out in 10 U.S.C. § 1161(b). That statute also provides that individuals, except those dropped from the rolls, who are separated are entitled to a discharge under honorable conditions unless the individual is discharged under conditions other than honorable under an approved sentence of a court-martial or the approved findings of a board of officers, or the individual consents to such a discharge with a waiver of court-marital or board proceedings. In view of this it appears that Congress has chosen to consider the character of service of reserves who are dropped from the rolls as distinguishable from the service of those who receive honorable discharges. Since the criteria used to drop an individual from the rolls is the same in both statutes, the distinction between honorable discharge and being dropped from the rolls should be maintained in both statutes for purposes of accrued leave entitlement.

Accordingly, since payment for accrued leave under 37 U.S.C. § 501 may be made only to individuals discharged under honorable conditions, payment in this case is not authorized.

Material included in the Air Force submission suggests that Mr. Parsons has previously been paid \$1,811.35 for 17 days of unused accrued leave, leaving only one-half day of unused accrued leave unpaid. Since any amounts previously paid were erroneous, Mr. Parsons may seek waiver of his obligation to repay them under the authority of 10 U.S.C. § 2774.

for 
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