



United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-262050

November 14, 1995

The Honorable Kay Bailey Hutchison
United States Senator
961 Federal Building
300 E. 8th Street
Austin, Texas 78701

Dear Senator Hutchison:

This is in further response to your letter dated June 26, 1995, on behalf of Mr. Raymond W. Wilebski who claims various amounts incident to his discharge from the Air Force in 1954 and the correction of his records in 1993 by the Air Force Board for the Correction of Military Records (AFBCMR).

Mr. Wilebski was given an undesirable discharge on January 18, 1954, from the Air Force. On December 8, 1993, upon application by Mr. Wilebski, the AFBCMR recommended that Mr. Wilebski's military records be corrected to show that his discharge was honorable, which recommendation was approved by authority of the Secretary of the Air Force. Mr. Wilebski made claim for arrears of pay, mustering-out pay (MOP), travel allowance, leave and punitive damages. The Defense Finance and Accounting Service, Denver Center, paid him the \$22.80 travel allowance due for travel from his place of discharge to his place of enlistment, which had been withheld in 1954 because of his undesirable discharge. However, they disallowed the additional items Mr. Wilebski claimed, as did our Claims Group by settlement dated September 8, 1994.

The change in Mr. Wilebski's discharge was made under authority granted to the Secretary of the Air Force by 10 U.S.C. § 1552 to change a military record to correct an error or remove an injustice. This statute also authorizes the payment of a claim for loss of pay, allowances and other emoluments found to be due as a result of the correction.

Our Office has jurisdiction to resolve claims for such military pay and other emoluments based on changes in a former service member's military records under 10 U.S.C. § 1552. We have held that in cases such as Mr. Wilebski's, where the military record is amended solely to show upgrading in the character of discharge to honorable, former service members are entitled only to the additional amounts they would have received had the initial discharge been under honorable conditions. Willie J. Shelton, B-217631, June 12, 1985. If the individual's entitlement to an amount was not affected by the initial nature of that person's discharge, then the amount did not accrue at the time of the correction of the records, but during the member's service or at the time of discharge. See B-217631, supra.

Claims against the government are subject to the 6-year statute of limitations and a claim is barred unless filed with our Office within 6 years of when the claim accrued. 31 U.S.C. § 3702(b). If a claim accrued on or after June 15, 1983, it is barred unless it was received in either our Office or the agency out of whose activities it arose within 6 years of accrual. 4 C.F.R. § 31.5.

Mr. Wilebski's claim for arrears of pay is barred by 31 U.S.C. § 3702(b) because his entitlement to any pay that was due him for his Air Force service was not affected by the nature of the discharge, and therefore the claim accrued at the date of his discharge in 1954, and he did not make claim until 1994.

Regarding Mr. Wilebski's claim for mustering-out pay (MOP), 38 U.S.C. §§ 1011-1016 (1952) provided for MOP for Korean Conflict era veterans contingent upon an honorable discharge, but limited each member to no more than one payment for Korean Conflict service. The change in the nature of Mr. Wilebski's discharge would restore his eligibility for MOP had he otherwise qualified for it upon discharge from the Air Force. However, the record before our Office shows that he was eligible for MOP based upon his prior Naval Reserve service from which he was discharged in April 1953, several months prior to his entry into the Air Force in September 1953.¹ The statutes do not provide a second entitlement, and thus Mr. Wilebski would not have been entitled to MOP based upon his Air Force service even if his Air Force discharge in 1954 had been honorable. See B-217631, supra.

¹Mr. Wilebski's DD form 214 (Report of Separation) prepared by the Navy at the time of his discharge from that service in April 1953, states "MOP \$300 Paid \$100 MOP 4/20/53." Under 38 U.S.C. § 1012 (1952), the maximum MOP entitlement was \$300, with an initial payment of \$100 to be paid at discharge and an additional \$100 payment to be made in each of the next 2 months. While the record before us does not show whether the Navy paid the two succeeding payments, we assume that in the normal course of events they would have been paid. In any event, a claim for those payments would now be barred by 31 U.S.C. § 3702(b).

As to the claim for 8 days' accrued leave, Mr. Wilebski's original discharge states that the member "forfeits all acc lv time" but does not show the amount of leave, if any, he then had to his credit which was forfeited. While the upgrade of his discharge would entitle him to payment for leave forfeited because of the dishonorable discharge, his claim must be denied because the records which would show the amount of leave which was forfeited have been destroyed and there exists no evidence to substantiate the claim. Where long periods of time have passed and records which may prove or disprove the validity of a claim are unavailable, we have no alternative but to disallow the claim. Lilborn C. Chisam, B-203752, Mar. 2, 1982.

Finally, neither 10 U.S.C. § 1552, nor any other statute we are aware of, provides authority for the government to pay Mr. Wilebski's claim for punitive damages pursuant to the correction of his records.

Copies of the Comptroller General's decisions referred to above are enclosed. We trust this answers your inquiry on behalf of Mr. Wilebski.

The documents forwarded with your letter are being returned herewith, as you requested.

Sincerely yours,

/s/Seymour Efros
for Robert P. Murphy
General Counsel

Enclosures

B-262050

DIGEST

Senator who inquired on behalf of former Air Force member whose 1954 undesirable discharge was upgraded to honorable by the correction board in 1993, is advised that claimant is entitled only to additional amounts that he would have received if initial discharge had been honorable. He is not entitled to arrears of pay which would have accrued upon discharge and is now barred by statute of limitations; accrued leave for which records no longer exist; mustering-out pay for which he was entitled to one payment only and records indicate he qualified under an earlier Navy discharge; and punitive damages for which no statutory authority exists.