



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

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B-176259

November 30, 1973

Mrs. Edna Sue Moses  
2416 Park Lane South  
Birmingham, Alabama 35213

Dear Mrs. Moses:

Further reference is made to your letter dated April 13, 1972, requesting review of the settlement of our Transportation and Claims Division dated April 4, 1972, which disallowed your claim for readjustment pay upon release from active duty in the United States Marine Corps on July 15, 1971.

By letter of February 28, 1973, we advised you that a number of cases involving circumstances similar to yours were pending in the United States District Court for the Central District of California, and reconsideration of your claim would be held in abeyance pending final judicial determination in cases such as yours. The Department of the Navy has recently advised us of the disposition of such cases, which will be hereinafter noted as relating to your claim.

The record shows that you enlisted in the United States Marine Corps Reserve on March 17, 1966, were assigned to active duty on May 9, 1966, and served until your discharge on August 16, 1967. You enlisted in the United States Marine Corps on August 17, 1967, and served until you were discharged on October 16, 1968. On October 17, 1968, you were commissioned in the United States Marine Corps Reserve and retained on active duty until your release on July 15, 1971. Your continuous active service immediately prior to July 15, 1971, totaled 5 years, 2 months and 7 days.

At the time of your commissioning on October 17, 1968, you agreed to serve on active duty in a commissioned status for a period of 3 years. Your "normal" release from active duty date was thus initially established as October 15, 1971. However, it is administratively reported that your agreement imposed no obligation on the Marine Corps to retain you on active duty for 3 years, you merely agreed to serve that length of time if your services were required, as a consideration for being granted a commission. Compare Henneberger v. United States, 185 C. Cls. 614 (1968) and 187 C. Cls. 665 (1969).

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On April 17, 1971, the Commandant of the Marine Corps issued Marine Corps Bulletin 1926 which reduced the initial obligation of Reserve officers serving on active duty whose expiration of active service occurred subsequent to June 30, 1971, and prior to July 1, 1972, by the number of months shown in the schedule there set forth. Under that directive your normal expiration of active service month of October 1971 was adjusted to July 1971. The effect of the directive was to establish the length of your tour of active duty in a commissioned status, as 2 years and 9 months, making your scheduled release date July 15, 1971.

It was recognized that the adjustment of expiration of active service dates might cause hardships in certain cases and in these instances a request for retention to normal expiration of active service date to the Commandant of the Marine Corps was authorized. The directive also made clear that the reduction of active service obligation which it effected did not preclude a Reserve officer from requesting augmentation or extended active service. It is administratively reported that you did not volunteer for an additional tour, nor is it indicated that you requested retention to your normal expiration of your obligated tour of duty.

Your claim was disallowed for the reason that since you were released from active duty on July 15, 1971, after completion of the tour of duty established by the Marine Corps and did not volunteer for an additional tour of active duty, your release was voluntary within the meaning of the applicable law and regulations.

Commandant of the Marine Corps Speedletter DFA3R-jac-3, May 18, 1971, directed your release from active duty on July 15, 1971, in accordance with Marine Corps Order 1900.III and Marine Corps Bulletin 1926, April 17, 1971, and also directed that your orders include a statement to the effect that the orders would not be considered an involuntary release from active duty.

On June 4, 1971, you addressed the Commandant of the Marine Corps requesting compliance with paragraph 5f of Marine Corps Order 1900.III, dated June 30, 1970, and verification of your entitlement to readjustment pay. Said paragraph 5f states that involuntary release occurs if the reservist is released without request prior to the date he is scheduled for release or his active duty agreement is due to expire. Your claim of entitlement was based on the fact that you had not requested early release from active duty and had served 5 continuous years of active duty.

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By Speedletter dated June 29, 1971, the Commandant of the Marine Corps denied your request for modification of your orders to show your release from active duty as involuntary, for the reason that you did not meet the criteria necessary to authorize readjustment pay as stated in the regulation. Thus, it appears that the Marine Corps considered your release on July 15, 1971, as voluntary since that was your new expiration of active service date as established by Marine Corps Bulletin 1926.

Section 687, title 10, U.S. Code, provides that a member of a Reserve component who is released from active duty involuntarily, or because he was not accepted for an additional tour of active duty for which he volunteered after he had completed a tour of active duty, and who has completed, immediately before his release, at least 5 years of continuous active duty, is entitled to a readjustment payment. Part 4, Chapter 4, Section B, Department of Defense Military Pay and Allowances Entitlements Manual, issued pursuant to the statute, provides in Table 4-4-6, Rule 9, that readjustment pay is not payable to a Reserve member who is released from active duty upon completion of a specific tour of active duty unless the member volunteers for an additional tour of active duty in keeping with current directives and is not accepted for the additional tour.

We find nothing in the existing record before us in your case which would warrant the conclusion that your release from active duty was other than voluntary as determined by the Marine Corps.

Accordingly, on the present record, there is no authority for payment of readjustment pay in your case and the settlement of April 4, 1972, is sustained.

For your information, however, the Department of the Navy has recently advised our Office regarding certain Marine Corps Reserve officers who had initially filed suits in the United States District Court of the Central District of California for readjustment pay pursuant to 10 U.S.C. 687(a) because their separations were initially considered by the Marine Corps to have been voluntary. Their cases were remanded by the Court to the Board for Correction of Naval Records for exhaustion of administrative remedies. The Correction Board, acting under authority of 10 U.S.C. 1552, corrected the officers' military records to show that their release from active duty had been involuntary, and after such correction, payment of

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readjustment pay was proper. This action was accomplished in the cases of Captain Eugene D. Johnson, USMCR, Captain Ralph L. Wise, USMCR, and Major James G. Goodwin, USMCR.

While the circumstances involved in those cases were not identical to those involved in your case, you may wish to obtain a ruling by the Board for Correction of Naval Records as to whether your relief from active duty was voluntary or involuntary.

Sincerely yours,

Paul G. Dombing

For the Comptroller General  
of the United States