



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

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B-194481

OCT 9 1980

The Honorable Jim Wright
House of Representatives

Dear Mr. Wright:

This is in further response to your inquiry of September 8, 1980, concerning two matters raised in Mr. Calvin L. Graham's September 3, 1980 letter to you regarding our action on his [claim for pay and allowances] for Navy service during World War II.

First, apparently Mr. Graham is concerned that our decision on his claim may have affected the honorable discharge given him by the Secretary of the Navy. In our decision B-194481, February 15, 1980, we stated with regard to Mr. Graham's honorable discharge:

"* * * The action of the Secretary of the Navy in giving him an honorable discharge did not change the legal effect of Mr. Graham's void enlistment and the failure of the BCNR [Board for Correction of Naval Records] to take action on Mr. Graham's petition for correction of his naval record precludes further authority of this Office to consider his claim for unpaid pay and allowances. * * *"

That language did not in any way take away from Mr. Graham the honorable discharge given to him by the Secretary of the Navy on May 5, 1978. Further, as you know, on March 31, 1980, upon reconsideration, we determined that Mr. Graham should be paid the unpaid pay and allowances that would have been paid to him at the time of his release from the Navy but for the void enlistment. Based on the only available records, we determined that he was entitled to a total of \$337 consisting of \$26.25 for unpaid basic pay, \$300 for mustering-out pay, and \$10.75 for transportation expenses.

After deduction for FICA (Federal Insurance Contribution Act) and Federal income tax, payment in the net amount of \$268 was made to Mr. Graham by check as authorized by Military Pay and Allowance Claims Voucher (DD Form 1096) dated April 8, 1980 (copy enclosed), prepared by the Navy Finance Center, Cleveland, Ohio, and certified payable by our Office. Mr. Graham questions whether the withholding for income tax from the mustering-out pay was correct.

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The Mustering-Out Payment Act of 1944, 58 Stat 8, 10, specifically provided in Section 5(a) that mustering-out payments due or to become due under that Act would be exempt from taxation. The Claims voucher also indicates that the basic pay item of \$26.25 was reduced by the amount of \$1.60 for FICA. However, since military pay was not subject to FICA withholding until January 1, 1957 (42 U.S.C. 410(1) (1976)), and since this item represented unpaid basic pay he earned while serving in the Navy in 1943, it does not appear that FICA should have been deducted.

Contributions made to FICA are covered under laws administered by the Social Security Administration and withholding for income taxes are covered by laws administered by the Internal Revenue Service. However, we have brought the matter of these apparently erroneous deductions to the attention of Navy Finance Center personnel. They acknowledged that the deductions were erroneous and they assured us that the necessary corrections will be made and an additional check for the amounts erroneously withheld will be forwarded to Mr. Graham promptly.

We trust that this serves the purpose of your inquiry and regret any inconvenience that this error may have caused Mr. Graham.

Mr. Graham's letter to you is enclosed.

Sincerely yours,

SILTON J. SOCOLAR

For the Comptroller General
of the United States

Enclosures - 2