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**GAO**

United States General Accounting Office  
Washington, DC 20548

Office of  
General Counsel

In Reply  
Refer to: B-179228

June 25, 1980

The Honorable Alice Daniel  
Assistant Attorney General  
Civil Division  
Department of Justice

AGC 80039

Attention: Lawrence S. Smith, Attorney  
Commercial Litigation Branch

Dear Ms. Daniel:

Subject: Bryan B. Riley v. United States  
Ct. Cl. No. 206-73

This is in response to your letter of May 19, 1980, in which you attached a letter from the plaintiff's attorney in which he continues to dispute certain items in our computation of Mr. Riley's entitlements set out in our letter of April 10, 1980, to the Court of Claims. This letter corrected certain aspects of plaintiff's leave entitlements which were incorrectly stated in our December 14, 1979 report to the court.

At the outset we would like to point out that there seems to be a misunderstanding as to the effect of the court's opinion in this case. It is our view that the court determined that Mr. Riley was not legally separated from active duty on April 30, 1973. As a result our computations are based on what entitlements he would have received had he continued on active duty in the grade in which he was serving less separation payments (readjustment pay and accrued leave settlements), active duty entitlements as an enlisted member, and retired pay.

The plaintiff first contends that he is losing 76 days of accrued leave because he is required to pay back the \$2,471.40 accrued leave settlement he received for these days on his initial discharge on April 30, 1973. Essentially, we related that since the effect of the court's order was that he had never been legally separated and had continued on active duty from May 1, 1973, the plaintiff was required to pay back the accrued leave settlement he received on April 30, 1973; but he was recredited with the



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76 days of leave which was reduced to 60 days at the end of the 1973 fiscal year. 10 U.S.C. § 701(b). The plaintiff's leave balance for the period covered by the court's opinion has taken into account this recredited leave.

Additionally, plaintiff objects to being required to pay back \$3,750 of the \$15,000 readjustment pay payment he received upon his discharge on April 30, 1973. He contends that his repayment of \$11,250 of the \$15,000 is sufficient. Again, we fully explained the reason for this \$3,750 payment in our April 10, 1980 letter to you. The plaintiff must repay his entire readjustment pay since the court concluded he had not been legally separated from active duty. The \$11,250 payment was required from him as a result of his being retired and was deducted from his retired pay pursuant to 10 U.S.C. § 687(f). Thus, the balance must be deducted.

Plaintiff next objects to his accrued leave balance of 31.5 days as of October 31, 1977. He contends he had no leave balance as of that date. This leave balance is based on information supplied to us from the Air Force. For the reasons below this figure is now irrelevant to the computation.

At the time we prepared the computation, there was a question of whether plaintiff would have to be retired as of October 31, 1977, as a Reserve officer with 20 years of service. We have informally contacted the Air Force and been advised that plaintiff has not been retired as of October 31, 1977. Consistent with the court order specifying that plaintiff be restored to active duty, if he so wishes, we understand plaintiff has requested active duty status and the Air Force is currently taking the necessary administrative steps. Therefore, plaintiff's award should contain no current accrued leave settlement. He would have an accrued leave balance of 88.5 days as of the date of judgment, September 19, 1979, as explained in our April 10, 1980 letter to you.

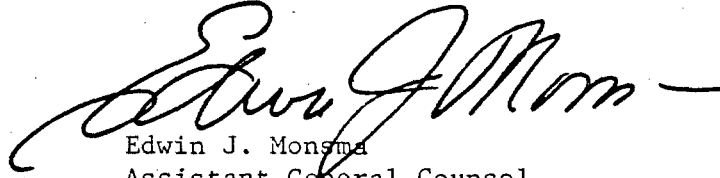
Finally, plaintiff sets forth a balance of approximately \$59,000 due him as of September 19, 1979, to which he adds active duty pay from September 19, 1979, to April 1, 1980, less retired pay he has received. There would appear to be little disagreement between our figures and plaintiff's figures other than the areas discussed. Thus, if plaintiff were not required to pay back the \$3,750 for readjustment pay and the \$2,471.40 for his accrued

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leave settlement of April 30, 1973, his recovery would be slightly in excess of his approximated amount.

As to plaintiff's calculations for the amounts due him post judgment, this is outside our present involvement in this case. This matter is in the first instance for resolution between the plaintiff and the Air Force.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Edwin J. Monsma". The signature is written in dark ink and is positioned above the typed name and title.

Edwin J. Monsma  
Assistant General Counsel