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S. Metcalf



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

W.A.D.
GAO
00412



GAO 00040

IN REPLY REFER TO: B-193529

OFFICE OF GENERAL COUNSEL

[Allegation of Wrongful Conviction by Court-Martial] December 28, 1978.

The Honorable Barbara Allen Babcock
Assistant Attorney General
Civil Division
Department of Justice AGC 00039

Attention: E. John Bailey, Attorney
Commercial Litigation Branch

Dear Ms. Babcock:

PN

Subject: Howard R. Barnett v. United States
Ct. Cl. No. 491-78

Requester

Reference is made to letter dated November 16, 1978 (file reference BAB:JFM:EJJBailey:jss 154-491-78), and statutory call form of the same date, requesting a report on the petition filed in the above-entitled case on November 13, 1978, wherein the plaintiff seeks judgment for backpay and other monies and benefits due plaintiff as a result of wrongful conviction by court-martial; an order expunging and eliminating any and all records of such court-martial from plaintiff's military records and forbidding any future consideration by defendant of said court-martial; an order directing defendant to restore plaintiff to the grade and rank in the United States Army which plaintiff would currently hold but for the court-martial; and such other relief as the court may deem just and proper.

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There is no record of any claim having been filed in the General Accounting Office on account of the matters set forth in the petition and we have no information as to the facts in the case other than the allegations therein.

The petition contains allegations relative to the plaintiff's court-martial conviction for violation of Articles 92 and 121 of the Uniform Code of Military Justice, 10 U.S.C. 892 and 921. Plaintiff contends in essence that he was denied his right to be represented by previously appointed qualified military counsel and his representation by civilian counsel was inadequate, thus resulting in his conviction by an improperly constituted court-martial which was without jurisdiction to try him, and that as a result thereof, he has been unlawfully denied more than \$6,449.60.

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Letter

B-193529

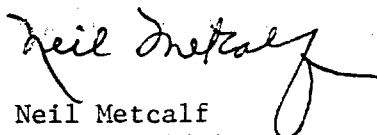
In the normal course of events, an individual charged with an offense punishable by court-martial is furnished adequate defense counsel in accordance with the requirements of 10 U.S.C. 827. The petition indicates that the plaintiff has no knowledge of the legal qualifications of his civilian defense counsel. We assume that the Department of the Army will provide you with a detailed report on the matter.

It has long been recognized by the Court of Claims that the rights of members of the Armed Forces are subject to certain demands of discipline and duty and it has taken the position that since it is not a reviewing court, it cannot pass upon errors or mistakes in judgment unless they are so flagrant as to make the action of the military authority null and void or deprive it of jurisdiction. See Krivoski v. United States, 136 Ct. Cl. 451 (1956), cert. denied, 352 U.S. 954 (1956). Since we have no information as to the circumstances of the plaintiff's court-martial, we do not discuss that feature of the case.

No record has been found in this Office of any claim or demand which might furnish the basis for a cross action against the plaintiff.

Further inquiry concerning this matter may be addressed to me at telephone number 275-5422.

Sincerely yours,


Neil Metcalf
Attorney-Adviser