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GAO

United States General Accounting Office
Washington, DC 20548

Office of
General Counsel

In Reply B-197460
Refer to:

January 23, 1980

The Honorable Jim Leach
House of Representatives
306 F and M Bank Building
Third and Jefferson Streets
Burlington, Iowa 52601

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Dear Mr. Leach:

This is in reply to your letter requesting information on the payment status of Mr. Robert Iossi, Davenport, Iowa, a member of the plaintiff class in Edmonds v. United States, D.S.C., Civil No. 75-1624. In brief, Mr. Iossi's judgment check was mailed to him on December 20, 1979. However, since Mr. Iossi raised a number of points in his initial letter to you, and in view of our discussions with your staff, we are providing a more detailed response.

VRB litigation and the South Carolina class actions

In 1977, the Supreme Court decided in favor of the plaintiffs in Larionoff v. United States, 431 U.S. 864, a suit by present and former Navy members for payment of a Variable Re-enlistment Bonus (VRB). After the Supreme Court's decision, approximately forty similar cases in various districts proceeded to judgment. In addition, two new classes were certified in the District of South Carolina -- Edmonds v. United States, Civil No. 75-1624, and Hebert v. United States, Civil No. 75-1857. The Edmonds and Hebert classes are quite large, several thousand members each, and consist of persons who (a) were not members of any of the other lawsuits, and (b) had not been paid administratively by the Navy as of a specified date. Due to the size of the classes, there is no single "judgment" covering the entire class in either case. Rather, there is a series of separate judgments, each with its own schedule of plaintiffs.

The Edmonds and Hebert judgments are developed and processed as follows: As counsel for the plaintiff classes develops lists of potential members, they are forwarded to the Navy for verification. As groups are verified, judgments are entered. After a judgment is issued, the Justice Department submits it to the General Accounting Office (GAO) for payment, certifying that no further review will be sought. Our Claims Division then certifies the judgment to the Treasury Department and Treasury issues the



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check(s). As directed by the various Edmonds and Hebert judgments, payment is in the form of a lump-sum check covering the entire schedule, drawn payable to the Clerk of the District Court for the District of South Carolina. The Clerk's office then makes distribution to the individual plaintiffs.

The first Edmonds and Hebert judgments were issued on August 10, 1978. Since then, over twenty judgments have been issued in the two cases, covering slightly over 5,400 plaintiffs. All have been submitted to GAO and certified for payment. The individual schedules have varied considerably in size, ranging from under 100 to over 2,000 persons. Thus, the process is expected to continue for some time in the future.

Mr. Iossi's judgment

Mr. Iossi is a member of the Edmonds class and was included in Schedule I-I. The judgment directing payment for this schedule was issued on September 27, 1979, and submitted to GAO by the Justice Department on November 5 with the certification that no further review would be sought.

It normally takes our Claims Division approximately 30 days after receipt of all necessary documents to process a judgment for payment. In the Edmonds and Hebert cases, we have worked out an informal arrangement with plaintiffs' counsel whereby we are furnished computer tapes of the larger schedules. This saves our Claims Division the time-consuming task of keying the individual names into our computer system manually. The tape for Schedule I-I was received the last week of November, the judgment was certified to the Treasury Department on December 11, and the lump-sum check mailed a few days thereafter. We contacted the office of the Clerk of the District Court in Columbia, South Carolina, and were informed, as noted at the outset, that Mr. Iossi's check was mailed to him at his current address on December 20.

We cannot tell from Mr. Iossi's letter to you if he was aware that, as of the time he wrote that letter, he had not yet been entered in a judgment.

Federal income tax withholding

Mr. Iossi's letter expressed concern that 20 per cent of his judgment amount would be withheld for Federal income tax. It is the Comptroller General's position that we will not deduct Federal income tax from a judgment unless the judgment itself so provides. B-124720/B-129346, August 1, 1961. Mr. Iossi's judgment contained no provision for deduction of Federal income tax, and thus none was withheld.

In late 1978, after the first group of Edmonds and Hebert judgments had been certified for payment, the Internal Revenue Service, taking the

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position that the VRB judgments represented taxable income, attempted to have the judgments modified. The District Court refused and the United States Attorney's office filed a notice of appeal which was subsequently dismissed. Thus, tax withholding provisions have not been included in any of the Edmonds or Hebert judgments to date.

Interest

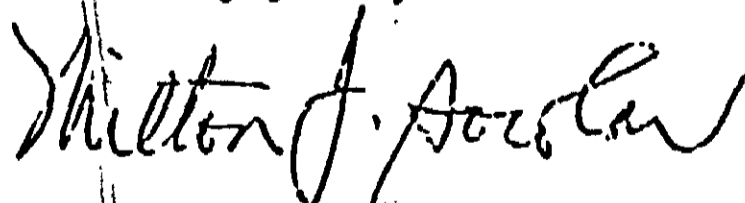
Mr. Iossi's judgment did not include interest because it is not authorized by law. The controlling principle, consistently recognized by the Supreme Court, is that interest is not recoverable against the United States unless expressly provided in the relevant statute or contract. E.g., United States v. Alcea Band of Tillamooks, 341 U.S. 48 (1951).

The VRB suits were brought under the jurisdictional authority of the Tucker Act, 28 U.S.C. § 1346(a)(2). The statute governing interest on these judgments is the first proviso of 31 U.S.C. § 724a, the permanent appropriation from which the judgments are paid. Under the first proviso of 31 U.S.C. § 724a, interest is payable only when the Government appeals and loses, and then only from the date a copy of the judgment is filed with GAO to the date of the mandate of affirmance. The application of this provision in a VRB class action was recognized in Larionoff v. United States, D.D.C. No. 626-73, memorandum opinion dated December 29, 1977, aff'd per curiam, D.C. Cir. No. 78-1010, July 17, 1978.

Counsel for the plaintiffs in Edmonds and Hebert have been filing copies of each judgment with GAO promptly upon issuance. However, since the Government did not appeal Mr. Iossi's judgment, there is no authority for the payment of interest.

We hope this information is helpful.

Sincerely yours,



Milton J. Socolar
General Counsel