

PLM2

**DECISION**



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

**FILE:** B-219060

**DATE:** February 19, 1986

**MATTER OF:** Richard M. Baske

**DIGEST:**

Former member of the United States Marine Corps was discharged from the service in 1972 with a bad conduct discharge which was later found to have been invalid. A valid discharge was executed in 1984. The former member claims backpay from the date of the invalid discharge to the date of the validly issued discharge. Although he might have been entitled to backpay from the date of the invalid discharge in 1972 to the date of the expiration of his enlistment in 1976, any claim he had accrued in 1976. Since the claim was not presented to this Office until 1985, it is barred by the statute of limitations set out in 31 U.S.C. § 3702(b)(1), which requires that the Comptroller General receive a claim within 6 years after it accrues.

This action is in response to a request for an advance decision from the United States Marine Corps regarding the claim of former Marine Private Richard M. Baske for back-pay.<sup>1/</sup> Mr. Baske's claim may not be allowed since it is barred by the provisions of 31 U.S.C. § 3702(b).

Richard M. Baske enlisted in the Marine Corps on September 8, 1971, for 4 years. On December 5, 1971, he was convicted by a Special Court-Martial for absence without leave from his unit during the period from September 18 to November 2, 1972. He was sentenced to confinement at hard labor for 2 months, forfeiture of pay for 2 months and a

---

<sup>1/</sup> The request was made by Lieutenant Colonel M. K. Chetkovich, United States Marine Corps, Disbursing Officer, Centralized Pay Division, Marine Corps Finance Center, Kansas City, Missouri, and was assigned Department of Defense Military Pay and Allowance Committee Control Number DO-MC-1453.

034586

B-219060

Bad Conduct Discharge. The U.S. Navy Court of Military Review upheld the finding and sentence. On June 15, 1973, Mr. Baske was notified of this action and he was given a Bad Conduct Discharge from the Marine Corps on that day.

In 1980, Mr. Baske apparently requested that his discharge be upgraded by the Naval Discharge Review Board. However, the Marine Corps informed the Naval Discharge Review Board that since Mr. Baske had been separated with a punitive discharge prior to the completion of appellate review of his case, the separation was erroneous and invalid.

The Marine Corps administratively determined that since Mr. Baske had been discharged before the time for petitioning the Court of Military Appeals for review of his case had expired, and since he had not specifically waived his right to an appeal, the original discharge action was null and void. On July 26, 1984, the Marine Corps issued a Supplementary Court-Martial Order executing the discharge. By letter of August 10, 1984, Mr. Baske was notified of these actions and was sent a new certificate of discharge.

On November 19, 1984, Mr. Baske submitted a claim for backpay from June 15, 1973 (the date of the original, invalid discharge) to July 26, 1984 (the date of the Supplementary Special Court-Martial Order). The Marine Corps questions whether payment may be made since Mr. Baske's enlistment would have expired on October 4, 1976, and since the claim was not made until 1984.

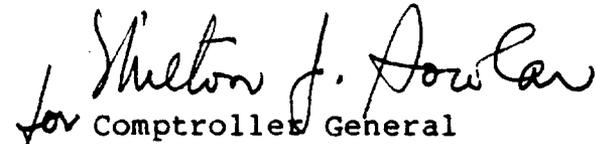
If an enlisted member's discharge is invalid the member is entitled to recover pay and allowances from the date of the invalid discharge to the date on which his term of enlistment would otherwise have expired. Clackum v. United States, 161 Ct. Cl. 34, 36 (1963). Thus, the only pay to which Mr. Baske could have been entitled was for the period from June 15, 1973, to October 4, 1976 (the adjusted date of the expiration of his enlistment).

Although Mr. Baske may have been entitled to the pay and allowances for the period, 31 U.S.C. § 3702(b) provides that the Comptroller General must receive a claim within 6 years after it accrues. We have consistently held that

B-219060

compliance with the 6-year statute of limitations is a condition precedent to the right to have a claim considered. The purpose of this act is to relieve the Government of the need to retain and go back over old records for the purpose of settling old claims. No matter how meritorious a claim may be, we have no authority to waive the provisions of the statute or to make exceptions to the time limit. Lieutenant Colonel Oran S. Emrich, B-218902, August 1, 1985. See also O'Callahan v. United States, 451 F.2d 1390 (Ct. Cl. 1971).

The latest date Mr. Baske could have accrued pay was October 4, 1976. His claim was not received by this Office until 1985, 9 years after the claim accrued. Thus, Mr. Baske's claim is barred and may not be paid.

*for*   
Comptroller General  
of the United States