

DOCUMENT RESUME

02927 - [A2163277]

[Claim for Readjustment Pay]. B-189206. August 2, 1977. 3 pp.

Decision re: CWO Jesse R. Edwards; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation (305).

Contact: Office of the General Counsel: Military Personnel.

Budget Function: General Government: Central Personnel Management (805).

Organization Concerned: Department of the Army.

Authority: Meritorious Claims Act of 1928 (31 U.S.C. 236). 10 U.S.C. 1163(d).

A request was made for reconsideration of the prior denial of a Army member's claim for readjustment pay. Reserve Warrant Officer's request to remain on active duty was erroneously denied. After his release with entitlement to readjustment pay, he made expenditures which he could not meet when his release and readjustment pay was canceled. There was no legal basis for paying the claim, nor were there such unusual elements as to justify recourse to Congress under the Meritorious Claims Act. (Author/DJK)

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DECISION



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

FILE: B-189206 DATE: August 2, 1977
**MATTER OF: Chief Warrant Officer Jesse R. Edwards,
USAR**

DIGEST: Reserve Warrant Officer's request to remain on active duty was erroneously denied. After orders were issued for his release with entitlement to readjustment pay he committed himself to expenditures which he could not meet when his release and entitlement to readjustment pay were cancelled. There is no legal authority to pay this claim based on the member's actions in anticipation of receipt of that pay nor are there equities involved which would justify reporting the claim to Congress under the Meritorious Claims Act of 1928.

This action is in response to a request for reconsideration of the action taken by the Claims Division of this Office on March 23, 1977, denying the claim of Chief Warrant Officer (W-2) Jesse R. Edwards, USAR, for a payment equivalent to the readjustment bonus which he was advised he would receive.

It appears that in July 1975, the member requested indefinite continuation on active duty in a volunteer status. By letter dated September 28, 1976, the request for retention on active duty was denied and by orders dated September 29, 1976, the member was ordered to be released from active duty effective October 11, 1976. These orders contained the following statement:

"Officer entitled to readjustment pay in accordance with Public Law 676 dated 9 July 1956 as amended. Total Active Federal Service: 18 years 8 months 12 days."

However, by letter dated October 7, 1976, the member was advised that his request for retention on active duty was approved and on October 8, 1976, the orders directing his release from active duty were revoked. Had Mr. Edwards' application for continuation on active duty properly been denied he would have been subject to release from active duty with readjustment pay. The member indicates that he made monetary commitments based on the assumption that he would receive readjustment pay of approximately \$12,000, which he was not able to

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meet when his release from active duty was revoked and readjustment pay was not paid.

It appears that after the initial determination to release Mr. Edwards, the Army became aware that he then had over 18 years of active Federal service. What caused the initial misunderstanding with respect to the member's years of service is not clear particularly since the orders of September 29, 1976, directing his release with readjustment pay indicated he had over 18 years active service. Whatever the reason for the initial error it was determined that Mr. Edwards' request for retention on active duty should be granted.

This action was apparently predicated on section 1163(d) of title 10, United States Code (1970), which provides:

"Under regulations to be prescribed by the Secretary concerned * * * a member of a reserve component who is on active duty and is within two years of becoming eligible for retired pay or retainer pay under a purely military retirement system, may not be involuntarily released from that duty before he becomes eligible for that pay, unless his release is approved by the Secretary."

Since it does not appear that the Secretary of the Army approved the release of Mr. Edwards, the Army was required to retain him on active duty. By being retained on active duty, Mr. Edwards, although not eligible to receive readjustment pay, was assured of remaining on active duty unless certain actions not pertinent here would occur, for a period which would permit him to achieve 20 years of active duty and thus be eligible for retired pay. Had he left the service in 1976 he would not have had sufficient service to qualify for retired pay.

While it is regrettable that initially an error was made in this case, we are aware of no statute which would provide a legal basis for the payment by the Government of amounts obligated by a service member in anticipation of a payment when such payments subsequently could not legally be made. Further, if he had been able to secure his release at that time in spite of the willingness of the Army to retain him on active duty he would not have been entitled to readjustment pay since his release in those circumstances would have been voluntary.

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Concerning the application of the Meritorious Claims Act of 1928, 31 U. S. C. 236 (1970), that act provides as follows:

"When there is filed in the General Accounting Office a claim or demand against the United States that may not lawfully be adjusted by the use of an appropriation theretofore made, but which claim or demand in the judgment of the Comptroller General of the United States contains such elements of legal liability or equity as to be deserving of the consideration of the Congress, he shall submit the same to the Congress by a special report containing the material facts and his recommendation thereon."

It has been the consistent position of this Office that the procedure provided by the Meritorious Claims Act is a extraordinary one, and its use is limited to extraordinary circumstances. The cases reported for the consideration of the Congress generally involve equitable circumstances of an unusual nature which are unlikely to constitute a recurring problem, since to report to the Congress a particular case where similar equities exist or are likely to arise with respect to other claimants would constitute preferential treatment over others in similar circumstances.

We do not believe that Mr. Edwards' case presents such elements of unusual legal liability or equity which would justify reporting the claim to the Congress for its consideration under the Meritorious Claims Act. Accordingly, the settlement of March 23, 1977, is sustained.

R. F. Ketter
**Deputy Comptroller General
of the United States**