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**DECISION**



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

**FILE:** B-171942

**DATE:** December 22, 1976

**MATTER OF:** Harvey Clifton Eure, Jr.; Lowell Dorn  
Witz; Jean Robert Canaguier

**DIGEST:** Three former members of United States Navy who, after reenlistment, acquired religious beliefs which would prevent them from working on Sundays, and who requested, upon advice of commanding officer, transfer to duty station where they would not be required to work on their Sabbath and stated that if such transfer were impossible they would accept discharge, are considered voluntarily discharged and therefore, according to 37 U.S.C. 308(e) (1970), are required to refund unearned portions of their reenlistment bonuses.

This action is in response to a letter dated April 9, 1976, and other correspondence, from Clark Smith, Director of the National Service Organization of Seventh Day Adventists. Mr. Smith possesses a power of attorney for Harvey Clifton Eure, former DP2, USN, and is requesting reconsideration of the Transportation and Claims Division's letter of March 8, 1976, in which it was determined that Mr. Eure was liable for the unearned portions of reenlistment bonuses he received incident to his service in the United States Navy. Mr. Smith also possesses power of attorney for Lowell Dorn Witz, former DP2, USN, and Jean Robert Canaguier, former DP2, USN, and requests that we consider whether they are obligated to refund the unearned portions of their reenlistment bonuses. The three men were discharged under similar circumstances, and were stationed at the Fleet Intelligence Center, Jacksonville, Florida, at the time of their discharge.

Mr. Eure reenlisted in the Navy for three years on August 29, 1970. Incident to that reenlistment he was paid reenlistment and variable reenlistment bonuses. He indicates that in July of 1971 he became interested in the Seventh Day Adventist Church and studied its teachings for approximately eight months. He became a Seventh Day Adventist and informed his superior officers that he could not work on his Sabbath which lasts from sundown Friday to sundown Saturday. During a personal meeting with his commanding officer, Mr. Eure was informed that it was not possible to

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ensure that he would never be required to perform his duties on Saturday; however, it was explained to him that he would only be required to work on his Sabbath if his work was considered essential by his commanding officer. As a result, it was determined that Mr. Eure could remain at his duty station and hope that he would never be called to work on his Sabbath, or he could submit a letter to the Chief of Naval Personnel requesting either a transfer to a duty station where his Sabbath observance could be assured or an immediate discharge if such a transfer was not possible. Mr. Eure chose the latter alternative and on February 4, 1972, requested a transfer but stated that he would willingly accept a discharge if a transfer was impossible.

Mr. Witz reenlisted on September 15, 1970, for two years, for which he was paid reenlistment and variable reenlistment bonuses. He too later became a Seventh Day Adventist, and after a conference with his commanding officer he wrote a letter on February 4, 1972, to the Chief of Naval Personnel requesting, in descending order of preference, either a transfer, an immediate discharge, or an early out while remaining at his present duty station.

Mr. Canaguier reenlisted in the Navy on October 28, 1969, for a period of six years for which he was paid reenlistment and variable reenlistment bonuses. In July 1971 he became interested in the Seventh Day Adventist Church and eventually became a member of that church. In February 1972, Mr. Canaguier was informed that his working hours were to be changed to a shift that would have required him to work on Friday night, thus conflicting with his Sabbath observance. Mr. Canaguier submitted a request to his division officer asking that his working hours be amended so that he would not be required to work after sundown on Fridays. He was told to submit a letter to the Chief of Naval Personnel requesting a transfer to another station where he could observe the Sabbath, or, if that was impossible, he was directed to state that he would accept an honorable discharge for the convenience of the Government. On February 4, 1972, Mr. Canaguier submitted such a request.

In response to the letters from these men the Chief of Naval Personnel in March 1972 directed that they were to be discharged under the authority of Bureau of Naval Personnel

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Manual (BUPERSMAN) paragraph 3850220 and also directed that recoupment be made of any unearned reenlistment bonus or variable reenlistment bonus in accordance with BUPERSMAN, paragraph 3840160.1. BUPERSMAN paragraph 3850220 provides for separation of enlisted personnel for the convenience of the Government. BUPERSMAN paragraph 3840160.1 refers to the provision of 37 U.S.C. 308(e) (1970) under which a pro rata portion of the reenlistment bonus shall be refunded to the Government by an enlisted member who either voluntarily or as the result of his own misconduct does not complete the enlistment for which the reenlistment bonus was paid.

The unearned portion of Mr. Eure's reenlistment bonus totaled \$2,705.94. After that amount was charged against accumulated credits, there remained a balance due the United States of \$2,343.02 at discharge. The total of Mr. Canaguier's unearned reenlistment bonuses amounted to \$5,134.50 of which \$4,598.42 remained outstanding after his discharge. The unearned portion of Mr. Witz's reenlistment bonus, \$175.67, was completely recovered through deductions from amounts due him upon discharge. Mr. Eure, Mr. Witz and Mr. Canaguier are contesting, through Mr. Smith, the Navy's determination that they are required to refund these amounts.

The statutory authority for the reenlistment and variable reenlistment bonuses paid to these men was 37 U.S.C. 308 (1970), subsection (e) of which provides in part:

"(e) Under regulations approved by the Secretary of Defense \* \* \* a member who voluntarily, or because of his misconduct, does not complete the term of enlistment for which a bonus was paid to him under this section shall refund that percentage of the bonus that the unexpired part of his enlistment is of the total enlistment period for which the bonus was paid."  
(Emphasis added.)

Regulations implementing 37 U.S.C. 308(e) are found in Part 1, Chapter 9 of the Department of Defense Military Pay and Allowances Entitlements Manual. Paragraph 10922k (change 25, October 18, 1971) of that manual provides in part that for purposes of recoupment of any unearned portions of reenlistment

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bonuses, the phrase "who voluntarily or because of his own misconduct" includes members discharged as directed by the Secretary of the service concerned in individual cases including "for the convenience of the Government upon the application and interest of the member \* \* \* because of special or unusual circumstances \* \* \*."

Paragraph 3840160-2 of the Bureau of Naval Personnel Manual provides, in relation to the Navy, that the determination of recoupment of reenlistment bonuses will be made and directed, when appropriate, by the Chief of Naval Personnel in cases of separation for the convenience of the Government upon the application and in the interest of the member because of special or unusual circumstances. Apparently, such a determination was made in the cases of Mr. Eure, Mr. Witz and Mr. Canaguier.

In his letter of April 9, 1976, Mr. Smith contends that these men should not be required to repay the unearned portion of their reenlistment bonus because they wanted to stay in the Navy and accepted a discharge only because they were instructed to do so in the interest of the Navy.

It seems clear, however, that these men wanted to remain in the Navy only if the Navy could accommodate religious beliefs which they acquired subsequent to reenlisting. Their Commanding Officer does not appear to have required them to request a discharge but merely outlined the alternatives which were available, given the fact they could not perform their duties on Saturday. In each of their letters to the Chief of Naval Personnel the members stated they would be willing to accept a discharge if they could not be transferred to a duty station where it would be assured they would not have to work on their Sabbath. Apparently, the Navy was not able to effect such a transfer and therefore, acting on their request and pursuant to their interest, gave them an early discharge. In view of those facts we cannot say that the Navy's determination that the members' discharges were voluntary was incorrect. Accordingly, on the present record they are required to refund the unearned portion of the reenlistment bonuses they received.

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If the members believe that errors exist in their official Navy records concerning their discharges, they may seek correction of those records from the Board for the Correction of Naval Records under 10 U.S.C. 1552 (1970) and 32 C.F.R. 723 (1976). Should their records be changed, the question of their entitlement to the unearned portion of their reenlistment bonuses may then be further considered.

*P. J. Keenan*  
Deputy Comptroller General:  
of the United States