

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

B-175921

February 1, 1973

Lieutenant Colonel G. L. Bottorff, FC
Finance Officer
Headquarters 2nd Armored Division
Fort Hood, Texas 76546

Dear Colonel Bottorff:

Further reference is made to your letter dated May 4, 1972, ALBAFO, with enclosures, forwarded to this Office by communication dated August 12, 1972, of the United States Army Finance Center, requesting a decision as to whether SP5 _____, USA, is entitled to a lump-sum readjustment payment incident to his release from active duty as a temporary captain in the Army of the United States on June 29, 1971.

The record shows that Mr. _____ enlisted in the North Carolina National Guard on November 19, 1958, and served on active duty or active duty for training during the following periods while a member of the National Guard:

June 14 to November 18, 1959,
November 19 to December 6, 1959,
August 6 to August 21, 1960,
June 3 to June 18, 1961,
June 10 to June 24, 1962,
June 8 to June 23, 1963,
June 27 to July 12, 1964,
July 11 to July 25, 1965,
July 10 to July 20, 1966.

The record also shows that on July 21, 1966, Mr. _____ was commissioned a second lieutenant in the Army National Guard of the United States and on June 30, 1967, he was ordered to active duty in the Army in that grade. He was promoted to the temporary grade of captain on March 10, 1969, and apparently involuntarily released from active duty as an officer effective June 29, 1971, under the provisions of Section XIV, chapter 3, Army Regulation 635-100, due to expiration of active duty commitment and disapproval of request for extension of service. Thereafter, on July 19, 1971, the claimant states that he enlisted as a specialist 5 in the regular Army in which he is now serving.

Since Mr. [redacted] had completed only four years' continuous active duty in the Army immediately before his involuntary release from active duty, he wishes to include his active duty service in the National Guard with his active duty service in the Army to reach the five years' continuous active duty necessary to qualify for readjustment pay. While you are not certain as to whether that would be proper, you indicate, as does Mr. [redacted] that our decision at 39 Comp. Gen. 223 (1959) appears to support Mr. [redacted] claim.

The statutory authority for the payment of lump-sum readjustment payment is contained in 10 U.S.C. 687, subsection (a) of which provides in pertinent part as follows:

"(a) * * * a member of a reserve component or a member of the Army * * * without component who is released from active duty involuntarily, or because he was not accepted for an additional tour of active duty for which he volunteered after he had completed a tour of active duty, and who has completed, immediately before his release, at least five years of continuous active duty, is entitled to a readjustment payment * * *. For the purposes of this subsection--

"(1) a period of active duty is continuous if it is not interrupted by a break in service of more than 30 days;" (Underscoring added.)

Section 101(22) of title 10, United States Code, for the purposes of title 10, defines active duty as follows:

"(22) 'Active duty' means full-time duty in the active military service of the United States. It includes duty on the active list, full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned."

As you indicate, in our decision 39 Comp. Gen. 223, 225, which modified 36 Comp. Gen. 129 (1956), we held that a member of a reserve component may count periods of active duty for full-time training (performed on or after August 10, 1956) as part of the continuous active duty necessary to determine eligibility for lump-sum readjustment pay. However, as provided in 10 U.S.C. 687(a), a member is

B-175921

19

entitled to a readjustment payment if he has completed immediately before his release from active duty at least five years of "continuous active duty." The five years of active duty must be continuous and if such service is interrupted by a break in service of more than 30 days, it does not meet the statutory requirement of being continuous. See Military Pay and Allowances Entitlements Manual, paragraph 40413. There is nothing in 39 Comp. Gen. 223 indicating that periods of active duty for full-time training may be counted as part of the continuous active duty where any such service is interrupted by a break of more than 30 days.

While in Mr. _____ case the four years' service he performed from June 30, 1967, to June 29, 1971, on active duty in the Army was continuous, most of the periods of active duty or active duty for training he performed as a member of the National Guard during the years 1959 to 1966 were separated from each other by breaks in service of more than 30 days and all such periods were separated from his active duty in the Army by breaks of more than 30 days. Therefore, such National Guard service may not be combined with Mr. _____ four years active duty in the Army to entitle him to a readjustment payment. Compare answer to question a, B-175771, June 7, 1972, 51 Comp. Gen. _____.

Contrary to Mr. _____ views, the mere fact that his membership in the National Guard was uninterrupted and that he was transferred directly from the National Guard to active duty in the Army affords no basis for the allowance of his claim unless it is shown that his "active duty" for training in the National Guard was uninterrupted by a period of inactive service of less than 30 days. On the record before us, except for the brief periods of active duty or active duty for training noted above, during the period of his membership in the National Guard, Mr. _____ may not be considered as being on "active duty" as a member of the National Guard as defined by 10 U.S.C. 101(22), for readjustment payment purposes.

Accordingly, Mr. _____ is not entitled to a readjustment payment and the voucher and supporting papers included with your letter will be retained here.

Sincerely yours,

Paul G. Dembling

Acting
Comptroller General
of the United States