

DECISION.



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

60404

FILE: B-185145

DATE: JAN 21 1976

MATTER OF: Mr. Erwin E. Luark

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DIGEST:

1. Former member questions the computation of mustering-out payments totaling \$300 made to him by the Air Force in 1975 based on the change in character of his 1958 discharge in 1974 to a discharge under honorable conditions. Since the member has received \$300, the maximum amount authorized by law and since there is no authority to pay interest in connection with mustering-out payments, there is no basis upon which an additional mustering-out payment may be made.
2. Former member claims pay for unused leave at the time of discharge in 1958 based upon change in character of such discharge in 1974 to one under honorable conditions. Where records containing his official leave data were destroyed pursuant to law governing destruction of old records, there is no basis upon which a determination can be made as to the number of days of unused leave. However, if the former member forwards the copies of the supporting official records he indicates he has, further consideration will be given the matter by the GAO.

This action is in response to a letter dated September 24, 1975, with enclosures, from Mr. Erwin E. Luark, 1008 S. W. 37th Street, San Antonio, Texas 78237, requesting reconsideration of the portion of our Transportation and Claims Division (now Claims Division) settlement dated September 17, 1975, which disallowed his claim for additional mustering-out payments, with interest, and payment for accrued leave, with interest, incident to his discharge from the United States Air Force in 1958.

In that settlement, Mr. Luark was advised that the Veterans' Readjustment Assistance Act of 1952, 66 Stat. 688, provided for the payment of mustering-out pay and that \$300 was the maximum amount that could be authorized; further, there is no authority for the payment of interest on mustering-out payments. Mr. Luark was also advised that since Air Force records containing leave data for periods prior to November 1, 1965, had been destroyed pursuant to law, there was no basis upon which favorable consideration could be given to his claim for payment of accrued leave.

In his letter dated September 24, 1975, Mr. Luark, while agreeing that he received \$300 as mustering-out pay, contends that the amount was improperly computed. As to his claim for accrued leave, he contends that he has leave data in his possession which will support his claim for payment for 60 days' accrued leave.

Under the provisions of title V of the act of July 16, 1952, 66 Stat. 688, a member of the Armed Forces who was discharged under honorable conditions was eligible to receive a mustering-out payment. If the member had performed active service for 60 days outside the continental limits of the United States or in Alaska the payment was to be in the amount of \$300. Section 503 of that act provided in part that no member of the Armed Forces was entitled to receive more than one such payment under that title. See B-179999, May 1, 1974. There was no provision for the payment of interest in connection with the mustering-out payment.

Since Mr. Luark admits that he received mustering-out payments from the Air Force in the amount of \$300, it appears that he has received the maximum amount allowed under the law.

With regard to Mr. Luark's claimed entitlement to payment for accrued leave, 37 U.S.C. 33(c)(1952 ed., Supp. V) provided that any member of the Armed Forces discharged after August 31, 1946, having unused accrued leave standing to his credit at the time of his discharge would be compensated for such unused leave in cash on the basis of the base and longevity pay, and allowances, applicable to such member on the date of discharge. However, subsection (d) of that section provided that any member discharged under other than honorable conditions forfeited all unused accrued leave to his credit at the time of discharge.

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The record shows that on February 11, 1958, the member was discharged from the Air Force under other than honorable conditions. As a result of that type of discharge, he forfeited all unused accrued leave. The record also shows that on July 17, 1974, the Air Force changed the character of his 1958 discharge to a discharge under honorable conditions. As a result, he became entitled to payment for the unused accrued leave which was otherwise creditable to his account on the date of his discharge, subject to the cash settlement limitation of 60 days contained in 37 U. S. C. 31a(b) (1952 ed.).

While circumstances indicate that Mr. Luark was not paid for such leave upon his discharge, unfortunately, this Office is unable to verify from Government records the number of days of unused accrued leave standing to his credit. We have been administratively advised that Mr. Luark's leave records were destroyed prior to the 1974 change of his discharge, pursuant to the law governing the destruction of old records. In the absence of such supporting records, there is no basis upon which this Office may authorize settlement. Accordingly, the action taken by our Claims Division in this case is sustained.

In this connection, it is noted that Mr. Luark indicates that he has in his possession copies of his leave record which may support his entitlement to be paid for his unused accrued leave. If Mr. Luark would forward copies of those records to this Office we will give further consideration to this portion of his claim.

B. F. KELLER

Deputy Comptroller General
of the United States