

DATE: Feb. 6, 1997

In Re:

[Redacted]

Claimant

Claims Case No. 97012101

## CLAIMS APPEALS BOARD DECISION

### DIGEST

A military member's entitlements are governed by statute. Misinformation from a government official cannot provide a basis for payment of amounts in excess of the statutory entitlement, since the government is not liable for the erroneous or negligent acts of its officers, agents, or employees.

### DECISION

We have been asked to render a decision regarding the calculation of the Variable Separation Incentive (VSI) payments of a former member of the United States Air Force. The request represents an appeal of Settlement Certificate, DOHA Claim No. 96070143 (September 9, 1996), in which we denied the former member's claim for increased VSI payments.

#### Background

The claimant was separated from the Air Force on March 4, 1995, with 17 years and 5 months of active service. He was advised that under the VSI program he would receive \$10,631.57 per year on the anniversary of his separation for up to 35 years. When he received his first annual payment, it was \$9,955.38, which is \$676.19 less than he had been advised that he would receive. The record indicates that the original figure of \$10,631.57 apparently arose from an incorrect calculation. The Settlement contains a recalculation of the VSI according to the Department of Defense Financial Management Regulation, DoD 7000.14-R, Volume 7, Part A (also known as the DoD Military Pay and Allowances Entitlements Manual), paragraph 40472a, which indicates that the \$9,955.38 which the claimant is currently receiving is correct for a member in his situation with 17 years and 5 months of active service.

#### Discussion

In Petty Officer John R. Blaylock, USN, 60 Comp. Gen. 257 (1981), the Comptroller General ruled on the claim of a member who was misinformed as to the amount of a Selective Reenlistment Bonus to which he was entitled. The decision states that a service member's entitlement to military pay is governed by statute and that in the absence of specific statutory authority the government is not liable for the erroneous or negligent acts of its officers, agents, or employees. Therefore, a member's entitlement cannot be varied by a contrary agreement or a miscalculation.<sup>(1)</sup>

In the situation before us, the record indicates that the \$10,631.57 per year which the claimant was advised that he would receive was the result of a miscalculation. The \$9,955.38 per year which he is currently receiving is correct. That amount is prescribed by law and cannot be varied due to miscalculation by a government employee.

#### Conclusion

We affirm the Settlement.

/s/ Michael D. Hipple

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Michael D. Hipple

Chairman, Claims Appeals Board

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Christine M. Kopocis

Member, Claims Appeals Board

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Jean E. Smallin

Member, Claims Appeals Board

1. That decision is in accord with United States v. Larionoff, 431 U.S. 864 (1977).