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

September 18, 1981

B-204126

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The Honorable Charles McC. Mathias, Jr.
United States Senate

Dear Senator Mathias:

This is in response to your letter of July 17, 1981, with enclosures, asking us to provide you with an opinion as to whether Mr. Paul Schwab is entitled to veteran's preference status for purposes of retention in the civilian service.

Mr. Schwab served as a commissioned officer in the Public Health Service (a uniformed service) during the Vietnam conflict from August 1966 to August 1968. He is presently employed by the Department of Health and Human Services and anticipates a reduction-in-force (RIF) action in that agency. He, therefore, seeks to resolve the matter of his preference eligibility.

Under 42 U.S.C. § 213(a) officers of the Public Health Service are entitled to the same rights, privileges, immunities and benefits of commissioned officers in the Army with respect to service performed "in time of war." Therefore, officers of the commissioned corps of the Public Health Service would appear to be entitled to veteran's preference in the United States civil service only if they satisfy the requirement of active service "in time of war." The Office of Personnel Management has determined that even though the Vietnam era is considered a period of war for veterans' benefits purposes as administered by the Veterans Administration, the last period of war for purposes of veterans' preference under 5 U.S.C. chapter 35 subchapter I is World War II. This interpretation is the essence of the determination made by the Office of Personnel Management in Mr. Schwab's case.

The matter of retention preferences in RIF situations is within the jurisdiction of the Office of Personnel Management (formerly the Civil Service Commission). On June 27, 1944, the Veteran's Preference Act of 1944, 58 Stat. 390, was approved and authorized the Civil Service Commission to promulgate regulations for its administration. Those provisions are now codified in 5 U.S.C. chapter 35, subchapter I. See Locke v. United States, 125 Ct. Cl. 414, 417 (1953). Clearly, Congress intended to vest the interpretation and

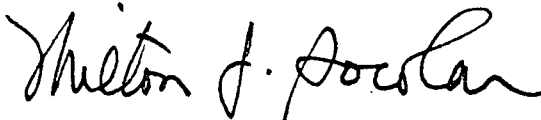
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application of the Act in the Commission. See Payne v. McKee, 153 F. Supp. 932, 939 (E.D. Va. 1957). Accordingly, since the Office of Personnel Management has jurisdiction under the veterans' preference provisions to determine who is a preference eligible for retention in the civilian service we are without authority to review such determinations.

We hope this information is responsive to your inquiry.

Sincerely yours,

A handwritten signature in cursive script that reads "Milton J. Fowler".

Acting Comptroller General
of the United States