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DECISION



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

FILE: B-198168

DATE: April 16, 1980

MATTER OF: Jesse S. McGee, Jr.

- DIGEST:
1. The correction of a military record to show a general discharge which does not otherwise change a court-martial sentence under which a dishonorable discharge was issued creates no entitlement in the member to receive pay and allowances forfeited pursuant to the court-martial.
 2. Discharge of service member terminates his entitlement to military pay and allowances and subsequent change in nature of discharge from dishonorable to general does not affect member's status in regard to his separation and does not create entitlement to pay and allowances after period of discharge.
 3. General Accounting Office lacks jurisdiction to consider allegations that court-martial was substantively and procedurally defective under the law, or to consider claims for educational benefits which are under the jurisdiction of the Veterans' Administration.

Mr. Jesse S. McGee, Jr., appeals the Claims Division's denial of his [claim for backpay] incident to his military service. Since there is no basis upon which payment of the claim can be authorized, we affirm the action of the Claims Division.

In February of 1943, the claimant, then a member of the Marine Corps, was court-martialed and sentenced to confinement for 3 years, forfeiture of pay and allowances, and a dishonorable discharge. The Acting Secretary of the Navy directed that the sentence be held in abeyance and the member to be returned to duty in a probationary status. Mr. McGee violated his probation and was placed in confinement from October 14, 1943, to December 6, 1945, when he received a dishonorable discharge.

Nearly 30 years later at the claimant's request, the Board for Correction of Naval Records reviewed his case pursuant to

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10 U.S.C. 1552 (1976). The Board recommended to the Secretary of the Navy that Mr. McGee's discharge be changed from a dishonorable one to a general one. On September 11, 1975, the Board's recommendation was approved on behalf of the Secretary of the Navy and Mr. McGee's record was changed accordingly.

On the basis of the change in the character of the discharge, Mr. McGee was sent payment for accrued leave, mustering-out pay, and travel upon discharge which had previously been withheld because they are not payable to a person who received a dishonorable discharge. Mr. McGee took issue with only receiving compensation for those items. He alleged entitlement to pay and allowances for his period of confinement, \$5,000 (subsequently reduced to \$3,000) a year from the date of his discharge to the date of his claim, educational benefits, and retired pay.

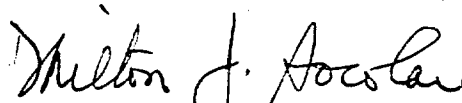
Regarding his claim for pay and allowances during his period of confinement, the change in the nature of his discharge by the Board without altering any other aspects of the court-martial sentence creates no entitlement to the pay and allowances forfeited pursuant to the court-martial sentence. B-178320, August 9, 1977. Payment of the claim for pay from the date of discharge to the filing of his claim is precluded because the discharge terminates the enlisted member's entitlement to all military pay and allowances. See B-189212, July 5, 1977. The claim for educational benefits cannot be adjudicated by our Office as the Veterans' Administration has exclusive jurisdiction in this matter. See B-189212, July 5, 1977. Finally, since the discharge in 1945 was not revoked, but was merely upgraded to a general discharge, his military status remains terminated as of the date of discharge in December 1945. Therefore, he has no basis to receive retired pay.

In his latest submission, Mr. McGee states that the basis of his claim has been continually misconstrued. He indicates that his claim arises because of alleged substantive and procedural defects in his 1943 court-martial which should render it null and void. He presented this argument to the Board which, nevertheless, did not change his record to remove the fact of his court-martial or his discharge. Therefore, no basis exists for us to authorize payment of the claimed amounts on this basis. We may not independently assess these allegations to determine the legality

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of the court-martial since such a review is outside the jurisdiction of our Office. B-120407, January 13, 1967.

Accordingly, the claim is denied.

A handwritten signature in cursive script, reading "Milton J. Fowler". The signature is written in dark ink and is positioned above the typed name.

For the Comptroller General
of the United States