

DETAINED PAY TO DISCHARGED ENLISTED MEN.

LETTER

FROM

THE SECRETARY OF WAR,

TRANSMITTING

A copy of a letter from the Paymaster-General of the Army with inclosures relating to the payment of detained pay to discharged enlisted men.

OCTOBER 25, 1893.—Referred to the Committee on Military Affairs and ordered to be printed.

WAR DEPARTMENT,
Washington, D. C., October 24, 1893.

SIR: I have the honor to transmit herewith for the information of the Committee on Military Affairs, House of Representatives, a letter from the Paymaster-General of the Army, dated the 17th instant, inclosing a copy of the decision of the Second Comptroller of the Treasury, dated September 6, 1893, in reference to the payment of detained pay to discharged enlisted men, and also copies of General Orders Nos. 63 of 1889, 38 of 1890, and Circular No. 3, A. G. O., 1891, upon the subject.

It is held by the Paymaster-General that the ruling of the Comptroller would result in a hardship to soldiers discharged with credits of detained pay that can not be adjusted at the time of their discharge, but must be adjusted through the Treasury Department, and to remedy this hardship he submits a joint resolution relating to the payment of detained pay to the enlisted men of the Army upon discharge, a copy of which is inclosed.

Very respectfully,

DANIEL S. LAMONT,
Secretary of War.

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

WAR DEPARTMENT,
PAYMASTER-GENERAL'S OFFICE,
Washington, D. C., October 17, 1893.

SIR: I have the honor to invite attention to the accompanying decision of the Second Comptroller, of September 6, 1893, in reference to the

payment of detained pay to discharged enlisted men, also to General Orders Nos. 63 of 1889, 38 of 1890, and Circular No. 3, A. G. O., 1891, upon that subject.

The rule announced by the Second Comptroller is that items of detained pay, when repaid, must be charged against the Army pay appropriation of the year in which the individual sums were withheld. It thus forbids the repayment of such sums as were withheld during periods covered by lapsed appropriations. Inasmuch as officers of the Pay Department have control of appropriations for three fiscal years only, they would, under this rule, be authorized to repay to discharged soldiers only such items of detained pay as have been withheld during the present and the two immediately preceding fiscal years. It would follow from this that for repayment of items of detained pay withheld prior to July 1, 1891, the soldier would be compelled to make claim through the Treasury Department.

This process of recovery would be so tedious as to be about equivalent to confiscation. It is not intended by this to find fault with the rule of the Comptroller, or to claim that it has not the support of law. It, however, is intended to emphasize the hardship, if not wrong, that must inevitably result to soldiers discharged with credits of detained pay which can not be adjusted at the time of their discharge.

To remedy the wrong herein pointed out, I have the honor to submit the accompanying form of joint resolution, and recommend it be submitted to Congress.

Very respectfully,

WM. SMITH,
Paymaster-General, U. S. Army.

The SECRETARY OF WAR.

TREASURY DEPARTMENT,
OFFICE OF THE SECOND COMPTROLLER,
Washington, D. C., September 6, 1893.

SIR: I am in receipt of your letter of the 6th instant. On August 17, 1893, in the case of Henry Cooney, private, Hospital Corps, U. S. Army, I made the following ruling:

[Pay detained by sentence of court-martial pursuant to General Orders No. 63, A. G. O., of 1889.—
Appropriation.—Opinion.]

Nine dollars of a soldier's monthly pay in October, 1889, were detained until his discharge in November, 1892, by sentence of a court-martial under the provisions of General Orders, No. 63, dated A. G. O., July 6, 1889, further defined in paragraph iv, Circular No. 3, A. G. O., dated April 8, 1891.

On July 1, 1892, the appropriation for the fiscal year ending June 30, 1890, out of which the soldier's pay for the month of October, 1889, was payable, lapsed and was covered into the Treasury.

It does not appear that any law has been passed authorizing the payment of money detained by sentence of court-martial out of the appropriation for the fiscal year in which the soldier is discharged, that the requirements of section 3664 of the Revised Statutes respecting the introduction of new items into estimates for appropriations have been complied with, or that any provision for payment of the amount detained has been made in the appropriation for the support of the Army for the fiscal year ending June 30, 1893.

I am, therefore, of the opinion that money detained from a soldier until his discharge, by sentence of court-martial, can be paid only out of the appropriation for the fiscal year in which it was detained, and, if that appropriation has lapsed, a report must be made to Congress for an appropriation.

This is the only decision made by the present Comptroller upon the subject of detained pay.

Respectfully,

C. H. MANSURE,
Second Comptroller.

Maj. A. E. BATES,
Acting Paymaster-General, U. S. Army.

JOINT RESOLUTION relative to the payment of detained pay to enlisted men of the Army upon discharge.

Resolved by the Senate and House of Representatives of the United States in Congress assembled, That sums known as detained pay, which have already been or may hereafter be withheld from the monthly pay of enlisted men of the Army in obedience to court-martial sentences, shall, when repaid, become a charge against the fund "pay of the Army" for the year in which said enlisted men have been or may be discharged.

[Extract from General Orders, No. 63.]

Upon conviction of offenses punishable at the discretion of courts-martial a soldier may be sentenced to have his monthly pay, or a stated portion thereof, retained from him for such periods as the court, subject to the restrictions of the eighty-third Article of War, may direct. The amounts so retained will be paid only on the final statements furnished enlisted men on discharge from the service.

[Extracts from General Orders, No. 33.]

1519. An enlisted man discharged for minority concealed at enlistment, or for other cause involving fraud on his part in the enlistment, is not entitled to pay and allowances, including those for travel, and shall not receive final statements unless deposits or detained pay are due him, in which case final statements, containing only a list of his deposits, or the amount of pay so detained, will be furnished.

[Extract from Circular No. 3.]

IV. *Detained pay.*—By the phrase "detained pay" (paragraph 1519 of the Regulations, as amended by General Orders, No. 38, of 1890, from this office) is meant such amounts of the pay of enlisted men as, *by sentence of court-martial*, are to be withheld until the soldier's discharge.—[General decision, March 10, 1891—3096 A. G. O., 1891.]

