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FILE: B-184514   DATE: SEP 1 0 1975

MATTER OF: Request for waiver of indebtedness
              consideration - Mr. John J. Carson, Jr.

DIGEST: Member who served in the uniformed services for
         over two years using leave at nearly the same
         rate as it accrued, who then took 47 days' con-
         secutive leave, and who did not verify his
         leave status through appropriate administrative
         channels when his leave balance erroneously
         reflected increasing amount of available leave
         rather than a negative balance, should have
         realized that he had used excess leave and thus
         had been erroneously overpaid. Therefore, a
         charge against him for the excess leave used is
         not waived.

     This action is in response to a letter dated June 6, 1975,
from Mr. John J. Carson, Jr., which in effect requests recon-
sideration of a settlement by our Transportation and Claims
Division, dated May 8, 1975, which denied Mr. Carson's request
for waiver of his indebtedness to the United States which arose
incident to his service in the United States Army.

     The record indicates that during his tour of duty in the
United States Army from February 13, 1967, to April 24, 1970,
Mr. Carson accrued 96 days' leave. During that same period he
used 115 days' leave, an excess of 19 days. Further, regarding
the final accounting for a member's leave, Army Regulation 630-5
provides that a period of excessive leave is a period during
which no leave is earned. Consequently, leave credits which
would otherwise accrue do not accrue during a period of excess
leave. As a result, an additional 2 days of leave were properly
chargeable against Mr. Carson's leave account, showing a minus
leave balance of 21 days.

     During the excessive leave period, Mr. Carson was not
entitled to, but did receive, payments of pay and allowances
totalling $266.63. By letter dated January 4, 1971, Mr. Carson
was advised of that indebtedness. The indebtedness was subse-
quently reduced to $253.43 by a credit of $13.20 for underpayment,
erroneous collection and duplicate collection of separate rations
during the period May 11 through May 31, 1968.

The report of investigation by the United States Army Finance and Accounting Center, Indianapolis, Indiana, indicates that the overpayment was caused by an administrative error in that there was a failure to charge his leave account with 47 days of leave which he took during the period August 8, 1969, to September 23, 1969. The report indicates that there exists no fraud, misrepresentation, or lack of good faith on the part of Mr. Carson or any person interested in obtaining waiver of the claim.

Our Transportation and Claims Division, upon examination of the record, concluded that Mr. Carson should be considered as at least partially at fault for failing to check his leave status after taking extended leave in August and September 1969, and advised the United States Army Finance and Accounting Center that Mr. Carson's waiver request should be denied.

Authority to waive claims of the United States, of this nature, is contained in 10 U.S.C. 2774 (Supp. II, 1972). This statute provides in subsection (b)(1) thereof that the Comptroller General, or the Secretary concerned, may not exercise such waiver authority if in his opinion:

"* * * there exists, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the member or any other person having an interest in obtaining a waiver of the claim * * *."

The word "fault", as used in 10 U.S.C. 2774, has been interpreted as including something more than a proven overt act or omission by the member. Thus, fault is considered to exist if in light of all the facts it is determined that the member should have known that an error existed and taken action to have it corrected. The standard employed by this Office is to determine whether a reasonable person should have been aware that he was receiving payments in excess of his proper entitlements.

In the present case, the record shows that effective June 30, 1969, Mr. Carson had accrued 71.5 days of leave since the beginning of his tour of duty on February 13, 1967, and had used 68 of those days, leaving a plus balance of 3.5 days. Since a member accrues leave at the rate of 2½ days a month (30 days annually), then as of July 31, 1969, shortly before he went on extended leave, Mr. Carson's total accrued leave, including the net carryover from the preceding fiscal year, was 6 days.

During August and September 1969, Mr. Carson accrued 5 additional days of leave and used a total of 47 days between August 8 and September 23, 1969, placing him in a minus leave status of 36 days effective September 30. His military pay vouchers for August and September 1969, showed that while he continued to properly accrue leave at the rate of 2½ days a month, he was not charged for the 47 days' leave taken in August-September 1969.

Since the record shows that Mr. Carson had been taking leave for over two years at nearly the same rate that it accrued prior to going on extended leave and that he had insufficient accrued leave time to cover that leave period, it is our view that upon receipt of his August, September, October and November 1969 pay vouchers, which showed a constant increase in cumulative accrued leave (8.5; 11.0; 13.5 and 16.0 days respectively), he had sufficient notice of the existence of an error and should have called the matter to the attention of the appropriate administrative officials. Since it is our view that a responsible member of the uniformed services should know approximately what his leave balance is and since Mr. Carson used a large amount of leave in excess of his entitlement, we must conclude that he was at least partially at fault in the matter and as a result there is no proper basis upon which this Office may waive the Government's claim against him. Accordingly, the action taken by our Transportation and Claims Division in his case is sustained.

R.F. KELLER

Deputy Comptroller General
of the United States