

DOCUMENT RESUME

03195 - [A2293427]

[Claim for Payment of Accrued Leave]. B-186329. August 15, 1977.
4 pp.

Decision re: SK1 Epifanio A. Abyome; by Robert F. Keller, Deputy
Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation
(305).

Contact: Office of the General Counsel: Military Personnel.

Budget Function: General Government: Central Personnel
Management (805).

Organization Concerned: Coast Guard.

Authority: Department of Defense Appropriation Act [of] 1976,
sec. 748 (P.L. 94-212; 90 Stat. 153; 90 Stat. 176).
Department of Transportation and Related Agencies
Appropriation Act, 1976 (P.L. 94-134). 37 U.S.C. 1001(b). 37
U.S.C. 501. 37 U.S.C. 101(3). 30 Comp. Gen. 103. 30 Comp.
Gen. 280. 30 Comp. Gen. 531. 42 Comp. Gen. 399. 42 Comp.
Gen. 447. 43 Comp. Gen. 287. M. Kraus and Bros. v. United
States, 327 U.S. 614 (1946). Miller v. United States, 294
U.S. 435 (1935). United States v. Boyce Motor Lines, 90 F.
Supp. 996 (1950).

E. J. Rowe, Authorized Certifying Officer for the
United States Coast Guard, requested an advance decision
concerning a claim for payment of accrued leave upon termination
of the present enlistment of a Coast Guard member without losing
the right to be paid up to another 60 days accrued leave at some
future date. A prohibition in the Department of Defense
Appropriation Act on the expenditure of funds under the act for
certain accrued leave does not prohibit expenditure of funds
from the Department of Transportation Appropriation Act for
payment of certain accrued annual leave for members of the Coast
Guard. Section 1001(b) of title 37, U.S.C. may not be used as an
authority to deny a benefit authorized for Coast Guard members.
(Author/SC)

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DECISION

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

FILE: B-186329

DATE: August 15, 1977

MATTER OF: SK1 Epifanio A. Abyome, USCG

- DIGEST:
1. A prohibition in the Department of Defense Appropriation Act on the expenditure of funds under that act for certain accrued annual leave for members of the uniformed services does not prohibit expenditure of funds from the Department of Transportation Appropriation Act for payment of certain accrued annual leave for members of the United States Coast Guard.
 2. Section 1001(b) of title 37, U.S.C. requiring that regulations of the Coast Guard relating to pay and allowances "shall as far as practicable, conform to regulations" approved by the Secretary of Defense, may not be used as authority to deny a benefit authorized for Coast Guard members under a substantive provision of law.

This action is in response to letter dated April 13, 1976, with enclosures, from Mr. E. J. Rowe, Authorized Certifying Officer, United States Coast Guard, requesting an advance decision concerning the propriety of making payment on a voucher in the amount of \$530.12, representing accrued leave in the case of SK1 Epifanio A. Abyome, USCG, 586 60 4122. That request was forwarded to our Office by endorsement dated April 15, 1976, and has been assigned Control No. ACC-CG-1254 by the Department of Defense Military Pay and Allowance Committee.

The submission states that the claim in this case represents an effort by a member of the United States Coast Guard to be paid for 23-1/2 days of accrued leave upon termination of his present enlistment and to retain the right to be paid for up to another 60 days' accrued leave at some future date, despite issuance of a Coast Guard directive (ALDIST 036/76 (COMDTNOTE 7220) effective

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February 10, 1976), which limits sale of leave by Coast Guard members to no more than 60 days' accrued leave during a military career.

The submission indicates that the basis for the issuance of the directive was the mandate contained in 37 U.S.C. 1001(b) directing that Coast Guard regulations relating to pay and allowances conform, as far as practicable, to regulations relating to pay and allowances of members of the Armed Forces approved by the Secretary of Defense. Apparently, Department of Defense regulations were amended based on the limitation contained in section 748 of the Department of Defense Appropriation Act, 1976, Public Law 94-122, 90 Stat. 153, 176.

The submission goes on to state that it is the member's position that the issuance of the Coast Guard directive, supra, unjustly deprived him of his right to be paid for future lump-sum leave accruals because he believes that the Department of Defense Appropriation Act does not apply to the Coast Guard. It is reported that it is the view of the Chief Counsel for the Coast Guard that the Appropriation Act in question and 37 U.S.C. 1001(b) did not provide a legal basis for the issuance of the Coast Guard directive, supra, and that the member will continue to be statutorily entitled to such payments until the leave laws are specifically amended or separate limiting action is made a part of Department of Transportation Appropriation Acts by Congress.

Doubt is expressed in the submission as to correctness of that view. It is stated that under the broad general authority of 37 U.S.C. 1001(b), it is mandatory that a review be made of all statutory pay and allowance regulations issued by the Secretary of Defense in order to determine whether the Congress intended that such regulations apply to the Coast Guard and if there is a clear showing of such intent, then similar regulations for the Coast Guard must be issued. In this connection, the view is expressed that the Secretary of Defense did issue a valid statutory regulation curtailing payment of unused leave, therefore, the only legal test as to its applicability is that a determination be made by the Coast Guard as to the practicality of issuing similar regulations.

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Section 748 of the Department of Defense Appropriation Act, 1976, Public Law 94-212, 90 Stat. 153, 176, provides:

"Sec. 748. None of the funds appropriated by this Act shall be available to pay any member of the uniformed services for unused accrued leave pursuant to section 501 of title 37, United States Code, for more than 60 days of such leave, less the number of days for which payment was previously made under section 501 after the effective date of this Act."

Public Law 94-212 is an act appropriating money for general operation of the Department of Defense (except for military construction). Its title, "Department of Defense Appropriation Act, 1976" indicates the limits of its authority. Nothing in the act gives any indication that it was intended to authorize or permit expenditures for functions or departments outside of the Department of Defense. The language of section 748, which places limits on the expenditure of funds for payment of accrued annual leave by members of the uniformed services, is quite explicit in that it refers to "funds appropriated by this act."

Members of the U.S. Coast Guard are by definition members of the "uniformed services" (37 U.S.C. 101(3)). However, it is our view that the language used in the Department of Defense Appropriation Act did not prohibit the use of funds previously appropriated by the Department of Transportation and Related Agencies Appropriation Act, 1976 (Public Law 94-134), for the payment of accrued annual leave for members of the Coast Guard, unless of course during the period covered by Public Law 94-212, the Coast Guard was operating as a service in the Navy. If Congress had intended to prohibit expenditures from the Department of Transportation Appropriation Act, language to that effect could have been included in the Department of Defense Appropriation Act, 1976. We do not believe that the omission of such language or some reference either to the Coast Guard or the Department of Transportation can be supplied by administrative interpretation. M. Kraus and Bros. v. United States, 327 U.S. 614 (1946); Miller v. United States, 294 U.S. 435 (1935); United States v. Boyce Motor Lines, 90 F. Supp. 996 (1950); 2 Am. Jur. 2d Administrative Law § 307, and cases cited therein.

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Under the provisions of 37 U.S.C. 501, a member of the Armed Forces is entitled to compensation in cash for unused accrued leave (not in excess of 60 days) to his credit at the time of his discharge, except, insofar as here concerned, no cash settlement is authorized to any member who is discharged for the purpose of entering into an enlistment in his respective branch of the Armed Forces on the day following the date of discharge. See 37 U.S.C. 501(b)(1). A discharge at expiration of a prescribed term of service followed by reenlistment is not, however, regarded as a discharge for purpose of enlistment. Cf. 30 Comp. Gen. 103 (1950); id. 280 (1951); id. 531 (1951). See also 42 Comp. Gen. 399 (1963); id. 447 (1963); and 43 id. 287 (1963).

Section 1001(b) of title 37, United States Code, requiring that regulations of the Coast Guard relating to pay and allowances "shall as far as practicable, conform to regulations" approved by the Secretary of Defense, relates to the implementation of applicable provisions of law by otherwise valid regulations. That provision cannot be used to justify the issuance of a regulation by the Coast Guard which, in effect, alters individual rights under a substantive provision of law. The payment provisions of 37 U.S.C. 501 are mandatory. This mandatory language was temporarily modified by the Defense Appropriation Act but only with respect to funds appropriated by that act. We find no authority under which the Coast Guard by regulation can suspend rights accruing to members under 37 U.S.C. 501.

Accordingly, the voucher accompanying the submission is returned for payment, if otherwise correct.


Deputy Comptroller General
of the United States