



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Frederick N. Puglisi
File: B-231476
Date: July 12, 1988

DIGEST

A former Navy member's failure to notice and seek corrective action regarding the Navy's erroneous calculations of his leave balances, resulting in overpayments to him, precludes the Comptroller General from waiving his indebtedness to the government under 10 U.S.C. § 2774 where the member reasonably should have recognized the errors. By regulation, however, interest on such indebtedness does not accrue while the waiver request is pending.

DECISION

This decision is in response to an appeal from our Claims Group's action of March 30, 1988, denying a request for waiver submitted by a former Navy member, Frederick N. Puglisi, of the debt he incurred as the result of military pay and allowance overpayments. Mr. Puglisi is also concerned whether he will be given time to make payment and whether he will be assessed interest and/or penalties should we deny his waiver request.

We sustain the Claims Group's denial of Mr. Puglisi's request for waiver. The Navy, in accord with its regulations, will not assess interest during the period the request for waiver was pending. Moreover, it appears from the record that the Navy will permit Mr. Puglisi to make a partial payment if he submits a plan to pay the rest of the debt in regular monthly installments.

BACKGROUND

Mr. Puglisi was discharged from the Navy on March 6, 1981. He had been granted 52 days of leave from January 12 through

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March 4, 1981, apparently on the basis that this would exhaust his total leave entitlement as of his date of discharge. However, Mr. Puglisi's leave balance calculation was incorrect since it did not reflect the deduction of 11 days of leave he had taken in September 1980 which was never posted to his leave account. Upon his discharge, a further error was committed since Mr. Puglisi's separation payment included an amount for unused leave when, in fact, he had no unused leave to his credit. In total, Mr. Puglisi was overpaid \$1,161.54 by the Navy as a result of the two errors in calculating his leave entitlements.^{1/}

Mr. Puglisi applied for a waiver of the indebtedness under 10 U.S.C. § 2774 (1982), which was denied by the Navy on September 18, 1987. The Navy concluded that Mr. Puglisi, once a disbursing clerk in the Navy, was partially at fault in the matter for failing to notice and report the errors as they were made.

Mr. Puglisi appealed the Navy's decision to our Claims Group, which also denied his request for a waiver. The Claims Group concluded that Mr. Puglisi should have noticed the Navy's initial error in failing to deduct from his leave balance the leave he took in September 1980 since the leave and earnings statements of September 1980 which he received indicated that the leave had not been deducted. The Claims Group also concluded that Mr. Puglisi should have recognized the subsequent erroneous overpayment of leave made upon discharge.

DISCUSSION

A claim against a member or former member of the uniformed services arising out of erroneous payments of pay or allowances may be waived in whole or in part if collection "would be against equity and good conscience and not in the best interest of the United States" 10 U.S.C. § 2774(a). However, the Comptroller General may not exercise his authority to waive a claim:

"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" 10 U.S.C. § 2774(b)(1).

^{1/} The Navy offset certain amounts owed to Mr. Puglisi reducing his indebtedness to \$867.31.

"Fault" exists if, in light of the facts, it is determined that a member should have known that an error existed and should have taken action to have it corrected. George S. Winfield, B-224774, Dec. 8, 1986, 66 Comp. Gen. _____. Thus, waiver cannot be granted where a reasonable person would have been aware that he or she was receiving payments in excess of his or her proper entitlement. 4 C.F.R. § 91.5(c).

We believe a reasonable person, without regard to any experience as a disbursing clerk, should have noticed the errors in the September 1980 leave and earnings statements and the separation payment upon discharge, and taken proper corrective action. See e.g., Gregory S. Heenan, B-200297, July 24, 1981. The Navy's failure to deduct the leave Mr. Puglisi took in September 1980 was evident from the leave and earnings statements he received for this period. Moreover, as noted previously, Mr. Puglisi scheduled his leave from January 12 to March 4, 1981, so as to use all of the leave he would accrue by the time of his discharge. Therefore, he should have known that he was not entitled to any lump-sum leave payment upon discharge. Due to Mr. Puglisi's failure to notice these errors and initiate steps to correct them, we will not grant a waiver in this matter.

With regard to interest on amounts owed to the government by Mr. Puglisi, the Navy Finance Center assured him by letter of May 23, 1983, that interest would not be assessed while his waiver request was pending. This is in accord with DOD Instruction 7045.18, Enclosure 3, Par. H (Mar. 13, 1985).

Mr. Puglisi has also expressed concern about having to make a lump-sum payment of the amounts owed. However, by letter of November 10, 1982, the Navy Finance Center stated, "if full payment would be a financial hardship, you may make a partial payment if you submit a plan to pay the rest of your debt in regular monthly installments." See also, 4 C.F.R. § 102.11.

Accordingly, we affirm the Claims Group's action denying Mr. Puglisi's request for a waiver. He remains obligated to refund the overpayments amounting to \$867.31 which he received through erroneous calculation of his leave. No prior interest on that amount will be assessed and, in accord with the Navy's earlier correspondence and our

regulations, Mr. Puglisi should have an opportunity to pay off his indebtedness to the government in monthly installments.

Milton J. Fowler
for Comptroller General
of the United States