



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: John P. Spanik
File: B-247872
Date: September 25, 1992

DIGEST

Former member of the Navy requests waiver under 10 U.S.C. § 2774 of his debt which arose when he was erroneously given travel advances at his permanent duty station. The member was a newly commissioned officer who believed he was entitled to per diem and spent the funds on food and lodgings. Partial waiver is granted for payments made to the member prior to the time he was informed of the error. The portion of the debt paid to him after he became aware that he was not entitled to it is not appropriate for waiver.

DECISION

This action is in response to a request from John P. Spanik for reconsideration of our Claims Group's partial denial of his request for waiver of his debt under 10 U.S.C. § 2774. Mr. Spanik was erroneously given travel advances from June 25, 1990 through October 9, 1990, while he was in a temporary duty status at his permanent duty station. He was advanced a total of \$3,749. Mr. Spanik apparently incurred travel expenses in late October or early November 1990, totalling \$106.70. That amount was offset from the debt, leaving a debt of \$3,642.30.

Our Claims Group held that Mr. Spanik had acted in good faith by accepting \$715.39. However, waiver of the remaining amount, \$2,926.91, was denied because he did not substantiate his meal expenses. It is our view that waiver may be granted for amounts advanced prior to October 9, however, waiver is not appropriate for the debt created by the October 9 payment.

Facts

Mr. Spanik was commissioned in Jacksonville, Florida on June 15, 1990. He was ordered to report for temporary duty to Jacksonville, his permanent duty station area, for additional training and subsequently to Pensacola, Florida. When he reported to Jacksonville he was incorrectly informed

by the Personnel Detachment following review of his orders, that he was entitled to per diem. He was then given travel advances at various times from June through October 1990. In early October, Mr. Spanik was notified that he was not entitled to per diem and should not have been given the advances since Jacksonville was his permanent duty station and travel allowances are not payable at a member's permanent station.

The record presented to us by the Navy is sketchy and does not provide complete information. However, we have been able to ascertain that he was advanced a total of \$3,749 through a series of travel advances between June 25, 1990 and October 9, 1990. The advances were apparently computed using 80 percent of his projected entitlement of \$8 per day for lodging and \$26 per day for meals and incidental expenses.

In his request for reconsideration Mr. Spanik further explains his expenses during that period, stating that he resided in the Bachelor Officers Quarters for 4 months. We also note that the record shows that Mr. Spanik has stated that he spent the travel advance for meals during his temporary duty in Jacksonville.

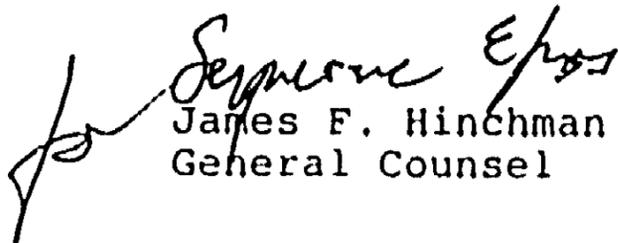
Generally, 10 U.S.C. § 2774 provides that the Comptroller General or the Secretary concerned may not waive a claim if in his opinion there exists any indication of fault, fraud, misrepresentation or lack of good faith on the part of the member.

Travel advances are not meant to represent a final payment to which a traveler is entitled. Travelers who receive advance travel funds are on notice that they are entitled to be reimbursed only for legally authorized expenditures. If during travel, a member does not spend the amount advanced to him on authorized expenses, he must return the balance. Thus, in adjudicating a waiver involving a travel advance, the Comptroller General has held that expenses incurred as a result of an erroneous travel advance fall under the statutory waiver authority to the extent the travel advance was made to cover the expenses erroneously authorized and the member actually spent the advance in reliance on the duly authorized, albeit erroneous travel orders. However, waiver is only appropriate to the extent that the member is indebted to the government for repayment of the amount advanced after the advance has been applied against legitimate expenses. The outstanding amount of the advance, if any remains, may then be applied to the erroneously authorized expenses and that amount may be considered for waiver. See Major Kenneth M. Dieter, 67 Comp. Gen. 496 (1988).

The Navy, in its original submission to this Office, acknowledges that Mr. Spanik was new to the service and could not have reasonably known he was not entitled to the travel advances, which were erroneously authorized by Navy personnel on the basis of Mr. Spanik's orders. Mr. Spanik was misled by Navy personnel to believe that he was entitled to per diem during the period of temporary duty when he in fact was not. In reliance on the erroneous information he was given travel advances which he spent on lodging and meals. While Mr. Spanik has not provided documentary evidence for the meals portion of his per diem, we have no reason to question his statement that the money was spent on meals. Accordingly, since there are no indications of fault, fraud, misrepresentation or lack of good faith on the part of Mr. Spanik, the erroneous travel advances in the amount of \$2,776.30 may be waived under 10 U.S.C. § 2774. This figure represents \$2,883 in advances less \$106.70 in legitimate expenses incurred.

However, the advance given to Mr. Spanik in the amount of \$866 on October 9, 1990 may not be waived under 10 U.S.C. § 2774 since at that time he was aware that he was not entitled to travel allowances and should not have accepted the advance.

Additionally, Mr. Spanik states that amounts were deducted from his pay to recover the debt. There is no mention of this in the record. Accordingly, the Navy should review his records and reconcile his account.


James F. Hinchman
General Counsel