

B-259530

February 16, 1995

Mr.
% Lieutenant J. L. Hunt
Legal Assistance Office
Naval Legal Service Office Central
206 South Ave., Suite B
Pensacola, FL 32508-5100

Dear :

This is in response to your attorney's letter of September 14, 1994, on your behalf in connection with your request for reconsideration of our Claims Group's settlement dated December 12, 1991. The Claims Group denied waiver of your debt to the United States incident to your military service.

You retired from the Navy on August 31, 1989, at which time you were entitled to 60 days' lump-sum leave payment in the net amount of \$2,516.68. However, you had previously received \$3,840 in advance pay of which you had only repaid \$1,920 at the time of your retirement. The unpaid balance of the advance pay, also \$1,920, should have been deducted from your final pay but was not because of administrative error. Therefore, you were overpaid \$1,920. Miscellaneous credits reduced the overpayment to \$1,851.60. As noted by the Claims Group, if a member receives a final payment from which a correct advance of pay should have been deducted, the final pay itself is an erroneous payment and may be considered for waiver. However, we agree with the Claims Group that waiver is not appropriate here.

Your attorney argues that a final accounting of pay is a complicated matter and a service member has a right to rely on the expertise of persons computing the pay. We do not agree in this case. We have reviewed your final Leave and Earnings Statement (LES) and find that you should have been able to detect the error. The LES for July 1989 clearly showed the amount of your lump-sum leave payment and the balance outstanding on the advance of pay. The only other item under the remarks portion of the LES was \$68.40 for clothing allowance. Likewise, in the LES for August 1989, the sum of \$1,920 was shown as the advance pay outstanding balance.

Accordingly, we find that you were at least partially at fault in the matter as that term is used in 10 U.S.C. § 2774, as explained in the Claims Group's settlement dated December 12, 1991, and deny the request for waiver.

Sincerely yours,

for /s/ Seymour Efros
Robert P. Murphy
General Counsel

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DIGEST

Where retiring member receives final pay which does not reflect amount of advance pay still outstanding and final Leave and Earnings Statement clearly shows balance remaining, member is at fault and waiver is not appropriate.