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United States  
General Accounting Office  
Washington, D.C. 20548

Office of the General Counsel

B-253020

June 10, 1993

Fountain, MI 49410

Dear Mr. :

This is in response to your appeal of our Claims Group's denial, dated October 16, 1992, of your claim for payment for unused leave upon your discharge from the United States Army.

At the time of your discharge from the Army on June 10, 1991, you had 60 days of accrued leave. However, you were only paid for 23 and 1/2 days because you had previously been paid for 36 and 1/2 days accrued leave in 1984 in accordance with a statutory provision prohibiting payment for more than 60 days of accrued leave during a military career. You contend that you should be paid for the remaining 36 and 1/2 days accrued at the time of your retirement because you were misadvised about an exception to this policy. You state that you were prohibited from taking leave prior to your discharge and therefore exceeded the 60 day limitation.

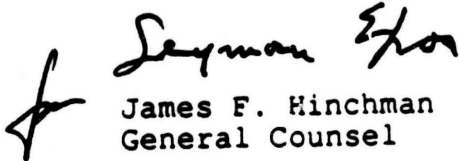
Paragraph 40401 of the Department of Defense Military Pay and Allowances Manual, implementing 37 U.S.C. § 501(f), states that "a military member can be paid for no more than 60 days of accrued leave during a military career." We have consistently held that since there are no exceptions to this limitation provided for in the regulation or statute, payment in excess of 60 days accrued leave is prohibited irrespective of the member's reason for failing to use the leave, including death or disability. Technical Sergeant (Deceased) and Staff Sergeant (Retired), B-199071, July 16, 1980. Therefore, the fact that due to the exigencies of the service you could not take leave from October 1, 1990 through April 1, 1991 does not provide a basis for an exception.

The only exception to the prohibition was approved by Congress in Public Law 101-501, the National Defense Authorization Act of 1990 (Section 1115(b)). The exception covered certain reserve and retired members called to active duty and deployed to Southwest Asia in support of Desert Storm/Desert Shield. The law also permits active duty

members who would have lost any accumulated leave in excess of 60 days at the end of fiscal year 1991 to retain, but not be paid for, such leave until the end of fiscal year 1992. Since you were discharged on June 10, 1991, prior to the end of the fiscal year, the exception is not applicable to you.

While you were misadvised of the exception's applicability to you, it appears that even if you had received correct advice, you could not have avoided the loss of excess leave because of the restriction on taking leave between October 1, 1990 and April 1, 1991. Moreover, we have specifically held that misinformation concerning a member's leave does not provide a basis for paying the member for leave in excess of the 60 day limitation.  
B-228683, Sept. 15, 1987.

Sincerely yours,

  
James F. Hinchman  
General Counsel