

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

FILE: B-186224

DATE:

AUG 26 1976

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MATTER OF:

Mr. Robert D. Sloan

DIGEST:

Since payments to member for advance leave were valid when made and no erroneous payments were made at discharge, the Government's claim for overpayments arising when the advance leave became excess leave upon early separation is not for waiver under 10 U.S.C. 2774, which contemplates forgiveness of erroneous payments only.

This action is in response to a letter dated December 31, 1975, addressed to the Navy Family Allowance Activity, Cleveland, Ohio, on behalf of Mr. Robert D. Sloan, a former member of the United States Navy, in which Mr. Sloan's counsel appealed the settlement of November 6, 1975, of the Transportation and Claims Division (now Claims Division) of this Office. This settlement denied Mr. Sloan's request for a waiver pursuant to 10 U.S.C. 2774 (Supp. II, 1972) of the Government's claim against him for \$603.27 representing pay and allowances received for periods of excess leave.

The record shows that at the time of his discharge on August 19, 1971, Mr. Sloan had received pay and allowances during periods of advance leave which became excess leave upon his early separation from the service. An audit of the member's final pay account in January 1972 adjusted the amount of the member's debt to \$624.58. This was a downward adjustment from the debt as stated at the time of discharge which also covered an unnecessary recoupment of reenlistment bonus. At the time of release the member was considered to be in debt to the United States in the amount of \$1,099.18. This debt was reduced by the sum of \$21.31, due Mr. Sloan at his discharge and by \$474.60 as a result of the January 1972 audit, resulting in the Government's claim in the amount of \$603.27.

The provisions of 10 U.S.C. 2774 permit the Comptroller General or in certain circumstances the Secretary concerned to waive claims of the United States arising out of erroneous payments of pay and allowances when such action is in the

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interest of equity and good conscience. To be subject to waiver a payment must be erroneous at the time it was made. Thus, valid payments of pay and allowances made on the basis of advance leave (leave authorized to be taken before it has been earned) are not erroneous payments and are not subject to waiver under 10 U.S.C. 2774. Since the payments for which Mr. Sloan is in debt involve the pay he received during periods of advance leave which only become overpayments upon his discharge before he had earned leave to cover the advances, we must conclude that the Government's claim for such excess leave is not subject to waiver under 10 U.S.C. 2774.

It is noted that, if the Government had the opportunity, at the time the member was discharged, to collect the amount owed for periods of advance leave not covered by leave subsequently earned, but through error failed to collect from payments otherwise due an erroneous payment would have occurred at discharge. This payment could be considered for waiver under 10 U.S.C. 2774. There was no such failure to collect in this case; the Navy withheld the \$21.31 available at discharge for collection and applied it against the overpayment. Therefore, no mistaken payment at discharge may be used to invoke the waiver provisions of 10 U.S.C. 2774.

Accordingly, the Claims Division settlement of November 6, 1975, is sustained.

R.F. KELLER

~~Action~~

Comptroller General
of the United States