

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

FILE: B-184436

DATE: JAN 28 1975

MATTER OF: James G. Heatherley

DIGEST: Where member should be aware of an erroneous credit of leave, 30 days in excess of actual entitlement, waiver under the provisions of 10 U.S.C. 2774, must be denied, notwithstanding attempts by member to correct the erroneous credit.

This action is in response to an appeal from an action dated December 4, 1974, taken by our Transportation and Claims Division (now Claims Division) which denied waiver of the claim of the United States against Mr. James G. Heatherley, in the amount of \$674.40, arising out of his service in the United States Navy. The erroneous payment of \$674.40 arose as a result of administrative error by Navy personnel in crediting him for the purposes of lump-sum leave payment with 43 days of leave rather than 12-1/2 (computed as 13) days at the time of his release from active duty in May 1972. The erroneous payment was discovered and collection action begun in August 1972. The total overpayment has been recovered by deduction from retainer pay due him.

The Transportation and Claims Division denied Mr. Heatherley's request for waiver under the provisions of 10 U.S.C. 2774 (Supp. II, 1972) on the basis that the lump-sum payment was erroneous on its face and should have been detected by a member of the Navy of his experience and years of service.

By letter dated January 1, 1975, Mr. Heatherley requests reconsideration of the Transportation and Claims Division settlement. He indicates that 90 days prior to his release from active duty he was informed that he would receive a lump sum payment for 43 days' unused leave. Mr. Heatherley indicates that he felt that this amount of leave was higher than that to which he was actually entitled, and he requested an audit of his pay records by the Navy Finance Center in Cleveland, Ohio. The Finance Center responded that the 43 days was the correct figure. Mr. Heatherley indicates that he again questioned the accuracy of the 43-day figure with the personnel office on his ship and was informed

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that their records showed 13 days to be his correct leave balance. Another check was apparently made with the Navy Finance Center which verified the leave balance of 43 days. As a result Mr. Heatherley was then paid for the balance of 43 days' unused leave upon his release from active duty.

Claims of the United States arising out of the erroneous payments of pay and allowances made to members of the uniformed services may be waived by the Comptroller General under the provisions of 10 U.S.C. 2774, in whole or in part, if the claim arose as the result of an erroneous payment; there is no indication of fraud, misrepresentation, fault or lack of good faith on the part of the member; and collection would be against equity and good conscience and not in the best interests of the United States.

While according to Mr. Heatherley's statement it appears that he did attempt to have the erroneous credit corrected, it seems that both he and the personnel office on his ship had definite reason to believe that the information received from the Navy Finance Center was erroneous.

In this connection, the Director, Navy Family Allowance Activity in commenting on Mr. Heatherley's appeal to the settlement of the Transportation and Claims Division, indicates that a difference of 30 days in determining the balance of unused leave is considered too great for a service member not to recognize as an error. We agree with this view.

Furthermore, although it appears the disbursing officer making the payment used as a basis the erroneous advice from the Navy Finance Center, it is our view that even after accepting the payment Mr. Heatherley should have realized that an inaccuracy still existed which would eventually be corrected and the overpayment recovered from him by the Navy. Since the erroneous payment was discovered and collection begun approximately 3 months after the payment was made, it is our view that the collection was not against equity and good conscience and was in the best interests of the United States.

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Accordingly, the action of the Transportation and Claims Division in denying Mr. Heatherley's request for waiver is sustained.

R.F.KELLER

Deputy      Comptroller General  
                 of the United States