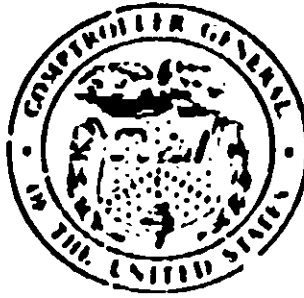


7244
DECISION



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

PI21 II

FILE: B-191457

DATE: August 7, 1978

MATTER OF: DOD Military Pay and Allowance
Committee Action No. 540

DIGEST. Although section 847 of the Department of Defense Appropriation Act, 1978 Public Law 95-111, 91 Stat. 886, 907 (1977) prohibits the use of funds appropriated by it for payment to any member of the uniformed service for unused accrued leave in excess of 60 days, this section does not operate to prevent payment to members in a missing status for unused accrued leave in excess of 60 days pursuant to 37 U.S.C. 501(h) and 10 U.S.C. 701(g) since the sole purpose of the appropriation restriction is to prevent the sale of unused accrued leave upon reenlistment.

This action is in response to a letter dated March 2, 1978, from the Assistant Secretary of Defense, Comptroller, requesting a decision on the question whether, notwithstanding the restrictions of the Department of Defense Appropriation Act for the fiscal year ending September 30, 1978, payments could be made pursuant to 37 U.S.C. 501(h) to service members for leave accumulated in a missing status in excess of 60 days pursuant to 10 U.S.C. 701(g). The question and discussion are contained in Department of Defense Military Pay and Allowance Committee Action No. 540 enclosed with the letter.

The codified statute which governs the entitlement and accumulation of leave for military members is 10 U.S.C. 701 (1976). In subsection (g) it reads as follows:

"(g) A member who is in a missing status, as defined in section 551(2) of title 37, accumulates leave without regard to the sixty-day limitation in subsection (b) and the ninety-day limitation in subsection (f). Notwithstanding the death of a member while in a missing status, he continues to earn leave through the date--

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"(1) the Secretary concerned receives evidence that the member is dead; or

"(2) that his death is prescribed or determined under section 555 of title 37.

"Leave accumulated while in a missing status shall be accounted for separately. It may not be taken, but shall be paid for under section 501(h) of title 37. However, a member whose death is prescribed or determined under section 555 or 556 of title 37 may, in addition to leave accrued before entering a missing status, accrue not more than one hundred and fifty days' leave during the period he is in a missing status, unless his actual death occurs on a date when, had he lived, he would have accrued leave in excess of one hundred and fifty days, in which event settlement will be made for the number of days accrued to the actual date of death. Leave so accrued in a missing status shall be accounted for separately and paid for under the provisions of section 501 of title 37."
(Emphasis supplied.)

The codified statute which governs the payments for unused accrued leave is 37 U.S.C. 501 (Supp. V, 1975). Payment for leave accumulated while in a missing status, which is not subject to the 60-day limitation of 10 U.S.C. 701(b), is made pursuant to 37 U.S.C. 501(h), which reads:

"(h) Payment shall be made for all leave accumulated under section 701(g) of title 10 as soon as possible after the name of the person concerned is removed from a missing status, as defined in section 551(2) of this title."
(Emphasis supplied.)

The aforesaid statutory provisions are clear and unambiguous. The question presented by the Committee Action arises as a result of language in the Department of Defense Appropriation Act, 1978, Public Law 95-111, § 847, 91 Stat. 886, 907-908 (September 21, 1977), which reads:

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"None of the funds appropriated by this Act shall be available to pay any member of the uniformed service for unused accrued leave pursuant to section 501 of title 37, United States Code, for more than sixty days of such leave, less the number of days for which payment was previously made under section 501 after February 9, 1976."

The specific issue is whether payment authorized by 37 U.S.C. 501(h) for leave accumulated under 10 U.S.C. 701(g) can be made with the funds appropriated for fiscal year 1978, or whether such payment is prohibited by Public Law 95-111, § 847. The same language which appears in that section also appears in Department of Defense Appropriation Act, 1977, Public Law 94-419, § 746 90 Stat. 1279, 1299 (September 22, 1976) and Department of Defense Appropriation Act, 1976, Public Law 94-212, § 748, 90 Stat. 153, 176 (February 9, 1976).

It is noted initially that the accumulation of leave while in a missing status is to be accounted for separately and that such leave is referred to as accumulated leave and not accrued leave. Thus, it is not clear from the language of the appropriation act limitations that they were intended to be applied to leave accumulated by a member in a missing status.

The legislative histories of these three appropriation acts explain the restriction imposed upon payment for unused accrued leave and indicate that the sole purpose of the restriction is to prevent the sale of unused accrued leave upon reenlistment. See for example, H.R. Rep. No. 517, 94th Cong., 1st Sess. (1975), where the matter is discussed as follows at page 74:

"Proper personnel management procedures require reasonable periods of leave to enhance troop morale, provide relief from job routine, and increase work efficiency. Leave with pay reaps all of these benefits for the military services. However, payment in lieu of leave accomplishes none of the benefits intended from the leave program and in fact becomes an incentive not to take leave.

"Current practice has permitted enlisted members to be paid in cash for accrued leave at the end of one enlistment and then reenlist and begin the process over again. Accordingly, the Committee has added a general provision to alleviate this expensive practice of making recurring payments for terminal leave.

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"The new section limits payment for accrued leave to sixty days, less any number of days for which a member is paid after enactment of this act. It is the intention of this committee to reenact this limitation next year with the 'after enactment' clause changed to state specifically this bill's date of enactment. The result will be that beginning after the enactment of this year's bill, servicemen can be paid for no more than sixty days during their career, regardless of termination, transfers or other interruptions. The Committee would welcome substantive legislation to address this issue."

See also S. Rep. No. 446, 94th Cong., 1st Sess. (1975), p. 60, where it is stated as follows concerning the purpose of Public Law 94-212, § 748:

"In its report 'Need to Eliminate Incentive for Accumulating Military Leave', the General Accounting Office recommended, in part, that payment for unused enlisted leave be limited to 60 days during a serviceman's career, thereby eliminating both the ability and incentive to accumulate leave for repeated sales at each reenlistment. The Defense Department concurred, and a legislative proposal to this effect has been submitted. In the interim, the House has included a provision within the fiscal 1976 Defense Appropriations Bill which precludes the use of funds for payments in excess of the 60-day criterion * * *."

The legislative intent of the appropriation restriction was to prevent enlisted men from accruing and cashing in up to 60 days of unused leave at the end of each enlistment period, reenlisting, and then starting the process anew. Since the accumulation and payment for leave of a missing service member would not constitute such an abuse of the system, and since the legislative history of the appropriations limitations does not refer to missing members who accumulated leave under 10 U.S.C. 701(g), it does not appear that Congress intended that payment for unused accrued leave in excess of 60 days be denied to members in a missing status.

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This view is supported by the language used in the Department of Defense Appropriation Authorization Act, 1977, Public Law 94-361, § 304(c), 90 Stat. 923, 926 (July 14, 1976), which amended 37 U.S.C. 501(b), the substantive law that authorizes payment for unused accrued leave, to read in part:

"(3) Payment may not be made to a member for any leave he elects to have carried over to a new enlistment in any uniformed service on the day after the date of his discharge; but payment may be made to a member for any leave he elects not to carry over to a new enlistment. However, the number of days of leave for which payment is made may not exceed sixty, less the number of days for which payment was previously made under this section after the first day of the second calendar month following the month in which the Department of Defense Appropriation Authorization Act, 1977, was enacted /enacted Sept. 27, 1976/."

Explanation of the amendment is given in S. Rep. No. 878, 94th Cong., 2d Sess., p. 134 (1976). The amendment limits payment for unused leave to 60 days during a career for all military personnel. The 60-day limit for a career is not retroactive and applies only to leave payment made after the enactment of the amendment.

Congress noticeably left 37 U.S.C. 501(h) the payment provision for leave accumulated while in a missing status, intact. Had Congress, at any time prior to passage of Public Law 94-361, wanted the 60-day career limitation to apply without exception, it would have so amended 37 U.S.C. 501(h) when it amended 37 U.S.C. 501(b). The legislative history of Public Law 94-361 does not indicate that Congress intended that any payment limitation be applicable to those in a missing status.

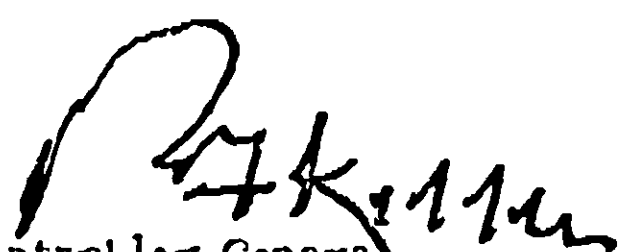
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The appropriation restriction of Public Law 94-212, § 748 was carried over in Public Law 94-419, § 746 and Public Law 95-111, § 847. The reason for including this language, even though the substantive law was amended to eliminate the unused accrued leave problem, is set forth in S. Rep. No. 1046, 94th Cong., 2d Sess. (1976), at p. 266:

"The fiscal year 1977 Defense Appropriation Authorization Act codified these same principles in law, but would exclude from these limitations all leave accrued prior to the effective date of the Act. The committee believes that abuses to the leave system should be uniformly and immediately eliminated, and that no 'save pay' feature is necessary or desirable." (Emphasis supplied.)

Congress chose to effectively limit payment for unused accrued leave prior to the effective date of Public Law 94-361 through subsequent appropriation acts, thereby achieving the same result as if the amendment to 37 U.S.C. 501(b) had been made retroactive. This was the sole purpose of Public Law 95-111, § 847 and Public Law 94-419, § 746.

Accordingly, notwithstanding the restrictions of the Department of Defense Appropriation Act for the fiscal year ending September 30, 1978, payments may be made pursuant to 37 U.S.C. 501(h) to service members for leave accumulated in a missing status in excess of 60 days, pursuant to 10 U.S.C. 701(g).

Deputy 
Comptroller General
of the United States