

DECISION



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

PLM-11

*[Request for Refund of Pay and Allowances Collected For Excess Leave Used]* **10,977**  
FILE: B-194542 DATE: August 6, 1979

MATTER OF: Gunnery Sergeant Danny L. Radish, USMC

DIGEST: Marine Corps member who takes 19 more days of leave than he would accrue prior to the expiration of his first extension of enlistment had pay and allowances withheld from him upon return from leave for the 19 days pursuant to Department of Defense regulation. Although the member subsequently entered into a second reextension of enlistment which would enable him to earn more leave than the excess he used, there is no authority to repay him the withheld pay and allowances.

The issue in this case is whether pay and allowances collected from a Marine Corps member for excess leave he used beyond what he would accrue in his extended enlistment may be refunded to him when he again extended his enlistment for a term sufficient to accrue enough leave to cover the excess.

The matter is presented by letter of February 22, 1979, from the Disbursing Officer, Marine Corps Air Station (Helicopter), New River, Jacksonville, North Carolina, requesting an advance decision as to whether the second extension of enlistment of Gunnery Sergeant Danny L. Radish, USMC, entitles him to reimbursement of pay and allowances previously withheld because of his taking excess leave. The request was assigned Control No. DO-MC-1317 and forwarded to us by the Department of Defense Military Pay and Allowance Committee. *DLG02542*

On March 24, 1972, Sergeant Radish enlisted in the Marine Corps for 6 years. On March 16, 1977, he voluntarily extended his enlistment for 1 year until March 23, 1979. At this point, Sergeant Radish elected to receive payment for his unused accrued leave and his leave balance was reduced to zero. During the year's extension, Sergeant Radish requested and was granted leave which resulted in his using 19 days' leave in excess of the number of days he would earn until the expiration of his then current enlistment on March 23, 1979. In accordance with applicable regulation, pay and allowances for the excess leave were collected from him.

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On February 16, 1979, Sergeant Radish entered into an agreement for a second extension of his enlistment for 2 years commencing March 24, 1979, and ending March 23, 1981. Because this second extension of enlistment (reextension) increases the leave Sergeant Radish will accrue prior to the normal expiration of his current enlistment to an amount greater than the total leave he previously used, the Disbursing Officer asks whether the pay and allowances previously withheld may be paid to Sergeant Radish.

The withholding of pay and allowances was done pursuant to the Department of Defense Military Pay and Allowances Entitlements Manual, Paragraph 10305a(6) which states in part:

"10305. Advance Leave Changed to Excess Leave

"a. When Collection Required. Collect pay and allowance from a member when advance leave becomes excess leave on date of:

\* \* \* \* \*

"(6) Return from a period of leave which was in excess of the number of days leave member will accrue prior to the normal expiration of his current enlistment or term of active service. \* \* \*"

This regulation implements the mandate of 37 U.S.C. § 502(b) (1976) which precludes payment for leave in excess of the amount (i.e., 2-1/2 days' per month of active service) authorized in 10 U.S.C. § 701 (1976).

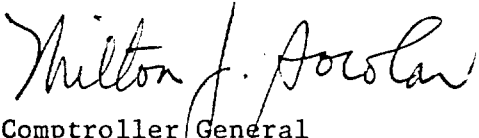
In line with the above statutes and a similar regulation, we have held that a member who takes excess leave must have the pay and allowances for the excess leave collected from him and may not carry over excess leave into a first extension of an enlistment. 43 Comp. Gen. 539 (1964). The basis of this decision was that any leave taken by a member which exceeded the amount he normally would earn until the end of his obligated duty was properly regarded as excess leave and required collection of pay and allowances under the regulation. The nature of excess leave would not be changed by a subsequent act of extending (or reextending) an enlistment

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which would then increase the amount of leave normally earned until the end of the enlistment. See 43 Comp. Gen. 539, supra, at 542.

In Sergeant Radish's case the collection action was proper under the regulation promulgated under the authority contained in 10 U.S.C. § 704 (1976) which provides that the Secretaries concerned shall prescribe regulations for administering the military leave system. See 33 Comp. Gen. 337 (1954). There is no basis for retroactively changing the nature of his excess leave to advance leave due to his subsequent act of reextending his enlistment.

Accordingly, Sergeant Radish may not be repaid the previously withheld pay and allowances.

  
For the Comptroller General  
of the United States