

DECISION



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PLM 2

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

FILE: B-196397

DATE: October 28, 1980

MATTER OF: Debts of Service Members Discharged Early

DIGEST: 1. A service may withhold from pay due a member with the member's consent, amounts expected to become due to the United States because of paid bonuses and advance leave which are expected to become unearned bonuses and excess leave due to the member receiving an early separation from the service. However, such amounts may not be withheld from current pay without the member's consent since no actual debt exists until the member is discharged.

2. Collection for advance leave which becomes excess leave on discharge must be computed based on pay received by the member at the time the leave was taken and not on pay rates in effect at time of the member's discharge.

The following questions are presented for an advance decision by the Principal Deputy Assistant Secretary of the Air Force (Financial Management): R
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"a. May a Service, with the member's consent, withhold from pay due the member prior to an early separation, a reasonable portion of the amount expected to become due to the United States because of paid but unearned bonuses and advance leave?

"b. Is it legally permissible to compute advance leave that becomes excess leave because of an early separation, at the rates in effect at separation rather than at the rates in effect at the time of the advance leave?"

[Request for Advance Decision]

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The matter was submitted through the Department of Defense Military Pay and Allowance Committee and assigned submission number SS-AF-1331. For the following reasons, question a is answered yes and question b is answered no.

Concerning question a, the submission indicates that military members who are given early separations often have used advance leave which was granted based on the leave they were expected to earn during their normal term of service. Also, they often have been paid reenlistment-type bonuses, continuation pay, and variable incentive pay based on their normal expected period of service. When they are discharged early the advance leave becomes excess leave, payment for which must be recouped. Similarly, the unearned portions of the bonuses must be recouped.

The Air Force indicates that it is difficult to collect these amounts from members after separation and involuntary collection of these projected debts prior to separation appears impermissible. However, the Air Force indicates that since the member is requesting a voluntary early release, if such a release is going to create a debt to the United States, it appears reasonable for the member to agree to the withholding from subsequent monthly entitlements of a reasonable amount of the anticipated debt, not to exceed two-thirds of his pay.

As the Air Force is aware, members who have received the bonuses in question become liable to refund a pro rata amount of the bonuses if they do not complete the term of service for which they were paid. See 37 U.S.C. §§ 308(d), 308(b), 311(b), 313(b) and (c). Also, collection is required of pay and allowances received for advance leave which becomes excess leave on discharge. 37 U.S.C. § 502(b) and Department of Defense Military Pay and Allowances Entitlements Manual (DODPM), paragraph 10305a. Thus, [although it is possible to estimate in advance based

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on a projected early discharge date the amounts which a member will owe upon discharge, the member is not actually in debt for unearned bonuses or advance leave until the date of discharge. Therefore, there is no authority we are aware of to begin collection of those amounts from the members' current pay without their consent prior to discharge. ¹

As to withholding current pay with the member's consent to cover an anticipated debt, while there is no specific statutory authority for such a procedure, there is authority for members to make voluntary allotments or assignments of their pay. 37 U.S.C. §§ 701(d), 702, 703, 705. Also, we have recognized that, although a member may not waive his statutory entitlement to retired pay (which is similar to the entitlement to active duty pay) he may decline to receive such pay. 28 Comp. Gen. 675 (1949); B-159343, August 24, 1966; and B-196839, April 24, 1980. Therefore, we would not object to the procedure proposed in question a.

In response to question b, a member of the Armed Forces is entitled, under 10 U.S.C. § 701(a), to accrue leave at the rate of 2-1/2 calendar days for each month of active service. Section 704 provides that such leave may be taken on a calendar-day basis as vacation or as an absence from duty with pay annually as accruing or otherwise, in accordance with regulations issued by the Secretary concerned. Under the provisions of 37 U.S.C. § 502(b) a member who is authorized by the Secretary concerned to be absent for a period that is longer than the leave authorized by section 701, is not entitled to pay or allowances during that part of his absence that is more than the number of days leave authorized. See 43 Comp. Gen. 539 (1964) and B-175160, April 27, 1972. The DODPM implements the mandate of 37 U.S.C. § 502(b) at paragraph 10305b in requiring that collection will be computed based on the pay and allowances actually received by the member during the period of leave involved. Therefore, it is not permissible to compute the amount of excess leave at the

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pay rates in effect at separation.] [The statute makes
it clear that the applicable rate to compute excess
leave is that which the member received at the time
the advance leave was taken.]

Milton J. Auster

Acting Comptroller General
of the United States