

Office of the General Counsel

B-222679

August 20, 1987

Commander, Navy Accounting
and Finance Center
Department of the Navy
Washington, D.C. 20376-5001

Dear Sir:

We are responding to your letter dated February 20, 1986 (your reference 7420/1-1W NAFC-42), to the Director, General Government Division, Claims Group, concerning the Claims Group's waiver of the indebtedness of (Z-2859569, January 23, 1986).

You say that you initially denied 's request for waiver on the basis that, while she may not have been aware at the outset that the granting of sick leave with pay for maternity purposes in her situation was erroneous, since she was sporadically paid for only 156 hours of the 560 hours involved, it was reasonable to expect her to inquire about the short checks and the missing checks. You found fault because she failed to question these fluctuating payments.

You request review of the criteria used as the basis for your determination in 's case and advice as to how it was inappropriate.

At the outset, we point out that waiver of a debt under 5 U.S.C. § 5584 (1982) is an equitable remedy. Because of its equitable nature, waiver must necessarily depend on the facts in each case, since by statute an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or an interested party precludes waiver. 5 U.S.C. § 5584(b) and 4 C.F.R. § 91.5(c).

In 's case, the issue is whether she was at fault in accepting the payments made to her during maternity leave and in failing to notify the Navy about the fluctuations in pay. Our Claims Group found that accepted the payments with the full belief that she was entitled to them and that collection of the erroneous payments would be

against equity and good conscience and contrary to the best interests of the United States.

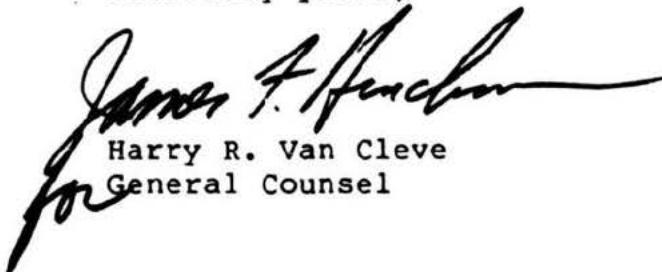
We have reviewed the Claims Group's action and we find no basis to reverse it. worked in a small office which did not possess written material on maternity leave.

's supervisor was informed by the Navy Civilian Personnel Office in Boston that employees are eligible for 14 weeks of sick leave for maternity purposes. He approved her request for leave on that basis. Since approval was solely dependent on oral information received from higher command, we do not consider to be at fault for assuming that such leave was to be with pay.

As to the matter of pay fluctuations, it is uncontradicted that 's pregnancy was difficult, followed by the time-consuming demands of a new-born infant. In view of her lack of prior knowledge or proper advice on the subject of leave and the full-time attention her new-born infant required, we do not believe there is sufficient evidence to show she was at fault in not questioning the pattern of the payments received.

Therefore, we concur in our Claims Group's allowance of waiver in 's case of the full amount of the \$1,102.92 erroneously paid. Please notify of the waiver action.

Sincerely yours,



for
Harry R. Van Cleve
General Counsel