



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: George S. Winfield

File: B-224774

Date: December 8, 1986

DIGEST

Discharged Navy member's request for waiver of a claim against him for excess leave he took while he was in service is denied since under the circumstances he either knew or should have known at the time that he was taking leave he had not earned, and therefore he was at fault in taking the excess leave. Such "fault" precludes favorable consideration of his request to be relieved of his repayment obligations under the provisions of the waiver statute, 10 U.S.C. § 2774. Interest charges incorrectly assessed on the debt must, however, be deleted under Department of Defense Instruction 7045.18, which provides that interest shall not accrue on the amount due while a request for waiver is pending.

DECISION

This is in response to an appeal of our Claims Group's action of May 8, 1986, denying in part a request for waiver submitted by a discharged Navy member, George S. Winfield, of the debt he incurred while he was in service as the result of overpayments of military pay and allowances he received. In addition to his request for full waiver of the remaining balance of his debt, amounting to \$355.36, Mr. Winfield asks that, in the event we affirm the Claims Group's determination, he be relieved of the interest payments of \$214.40 charged by the Navy in July 1986 on the amount due. Based on our review of the record, we agree with the Claims Group's determination denying Mr. Winfield's request for a complete waiver. With regard to the interest charges, Mr. Winfield was correct in his belief that no interest should have been assessed on the claim during the period his request for waiver was pending.

BACKGROUND

Mr. Winfield was discharged from the Navy on November 26, 1982. On November 13, 1981, he had received a payment in the

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amount of \$369 from the Navy that it did not charge to his account. The amount subsequently was charged against his account, but only after Mr. Winfield received the payment again as part of his final payment upon discharge.

In addition, Mr. Winfield took 19 days' leave in excess of the amount he had earned. According to the record, his Leave and Earnings Statement (LES) showed an erroneous leave balance that was much higher than leave actually earned. Mr. Winfield was permitted to take a large amount of excess leave near the end of his active duty career, producing an additional overpayment of pay and allowances amounting to \$355.36.

In his initial request for waiver, Mr. Winfield stated that he was not aware of receiving any overpayments in pay or that he had taken excess leave. With reference to the pay, he did not know how much his final payment upon discharge should have been and was not aware that the Navy had failed to credit a payment to his account. Also, he indicated that he relied on his LES' leave balance since the figures matched those on file in his personnel and disbursing offices.

Under 10 U.S.C. § 2774 the Claims Group relieved Mr. Winfield of his indebtedness for the final payment that was not properly credited to his account. We agree with the Claims Group's determination since there is no evidence of fault, fraud, misrepresentation, or lack of good faith by Mr. Winfield concerning that overpayment. Nothing in the record suggests that Mr. Winfield was or should have been aware that the 1981 payment was not credited to him, and since he did not know how large his final payment from the Navy would be, waiver in this instance seems appropriate.

The Claims Group denied Mr. Winfield's request for waiver of the claim for a refund of the \$355.36 overpayment he received as the result of the 19 days' excess leave that he took. It agreed with the Department of the Navy that Mr. Winfield should not have relied on the figures in his LES since he suspected they were incorrect. His failure to inquire about the accuracy of the figures to officials in his personnel or disbursing offices constituted fault under 10 U.S.C. § 2774, thereby precluding waiver.

ANALYSIS

Section 2774 of title 10, United States Code, provides in pertinent part that a claim against a member or former member of the uniformed services arising out of erroneous payments

of pay or allowances, may be waived in whole or in part if collection "would be against equity and good conscience and not in the best interest of the United States." Under subsection 2774(b) the Comptroller General may not, however, exercise his authority to waive a claim:

"(1) if, in his opinion, there exists, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the member or any other person having an interest in obtaining a waiver of the claim. * * *

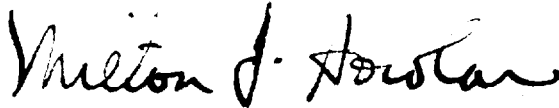
The term "fault", as used in this subsection, has been interpreted by this Office to mean more than an overt act or omission by a service member. "Fault" exists if, in light of the facts, it is determined that a member should have known that an error existed and should have taken action to have it corrected. Petty Officer Robert R. McGhee, Jr., USN (Retired), B-196226, August 30, 1984. The applicable standard is whether a reasonable person should have been aware he was receiving payments in excess of his proper entitlement. Thomas M. Welsch, B-196461, February 13, 1980. See also Price v. United States, 621 F.2d 418 (Ct. Cl. 1980).

In this case, Mr. Winfield's LES showed an incorrect annual leave balance during his last year on active duty. He states that he suspected the figure was higher than it should have been. His suspicion should have prompted him to question the erroneous figures maintained by his disbursing and personnel offices. Instead of drawing attention to the error, once he discovered that his LES figures were the same as those in the disbursing and personnel offices, he accepted them as correct and took excess leave. Nothing in the record suggests that Mr. Winfield should have believed he was entitled to the amount of leave printed on his LES. Had he pursued the matter, it is likely that the error would have been discovered and Mr. Winfield's records corrected.

We have previously held that "where a member fails to remain reasonably within his leave balance, he should realize that he will be required to repay any amounts received while in an excess leave status, and as a result of accepting the payments he must be considered at least partially at fault in the matter." Gregory S. Heenan, B-200297, July 24, 1981. Under the circumstances of this case, we believe that Mr. Winfield was at fault in taking excess leave and, therefore, we may not grant him full waiver of the claim.

Mr. Winfield requests that we deduct the interest charged to the claim. He bases this request on information he received from the Department of the Navy that interest would not accrue during the time his request for waiver was pending. After consulting Department of the Navy officials, we learned that Mr. Winfield erroneously was charged interest on the claim. Department of Defense regulations provide that while a request for waiver is pending, interest on the amount due shall not accrue. DOD Instruction 7045.18 Enclosure 3, para. H (March 13, 1985). The Navy Accounting and Finance Office attributes the \$214.40 interest charge to a systems error.

Accordingly, we affirm the Claims Group's action denying Mr. Winfield's request for a total waiver. He remains obligated to refund the overpayment amounting to \$355.36 which he received through his use of 19 days' excess leave. The \$214.40 interest charge on this debt is, however, deleted.



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