



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: James L. Grahl - Request for Waiver
File: B-239274
Date: July 12, 1990

DIGEST

A member who was erroneously overpaid for 12 days accrued leave when he separated from the United States Navy is not entitled to waiver of the erroneous payment where the record does not establish that he was sufficiently diligent in questioning what he should have known was a mistake.

DECISION

Jeffrey L. Grahl appeals a denial by our Claims Group of his application for waiver of the United States' claim against him for \$392.04 erroneously paid to him for accrued leave at the time of his separation from the United States Navy. We sustain the Claims Group's denial.

Mr. Grahl was discharged from the United States Navy on November 15, 1986. At that time he was erroneously paid for 12 days accrued leave. As of June 30, 1986, he had 11 days accrued leave and up to the date of his discharge, he earned an additional 11-1/2 days. However, from May 1986 until his discharge, he used 22 days of the 22-1/2 days of the accumulated leave. At the time of discharge he indicates that on two occasions he questioned responsible officials about his leave balance but was assured that the leave balance as well as his separation pay was correct. On March 17, 1987, he was advised of an overpayment of \$392.04 and the Navy's intention to collect this amount.

Section 2774 of title 10, United States Code, authorizes the Comptroller General to waive a claim of the United States arising out of erroneous payments of pay and allowances made to members or former members of the uniformed services, if collection would be against equity and good conscience and not

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in the best interests of the United States. The Comptroller General may not, however, exercise this authority, if in his opinion, there exists in connection with the claims any indication of fraud, fault, misrepresentation or lack of good faith on the part of the member or any other person in accepting the overpayment.

We have concluded that "fault" exists where a member knew or should have known that an error existed, and should have taken appropriate action. George S. Winfield, B-224774, Dec. 8, 1986. If a reasonable person should have been aware that he or she was receiving an erroneous payment, waiver cannot be granted. Colonel William J. Frome, USAF (Retired), B-199808, Mar. 23, 1981.

A member has a responsibility to be aware of his entitlements. Mr. Grahl, a member of the Navy for over 8 years, should have had a reasonable awareness of his current leave balance. When he used 22 days of leave exhausting almost his entire leave balance, within a relatively short period prior to his separation he should have known a lump sum payment based on 12 days unused leave was erroneous. Although, he indicates that he verified his leave balance at separation with the proper officials, we believe he had a duty to pursue the matter further.

In James A. Jamiel, B-235158, Feb. 6, 1990, we waived the government's claim for reimbursement of excess payment for accrued leave at time of discharge, on the basis that the member sufficiently pursued with appropriate officials the question of his entitlement. Waiver was granted on a record which supported the conclusion that the member became convinced of his entitlement. We do not consider, in the instant case, that the record establishes the member was sufficiently diligent in questioning what he clearly should have known was a mistake. In the circumstances we cannot conclude that Mr. Grahl is without fault, and waiver of the government's claim is, therefore, denied.

Milton J. Fowler
for Comptroller General
of the United States