

V. 146795
Vickers



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Donald J.D. Hays, Sr.
File: B-247943
Date: June 4, 1992

DIGEST

A former Air Force member was erroneously overpaid for 26 days of leave upon separation from the service. The member is not entitled to waiver of the overpayment because he should have been aware of his approximate leave balance and therefore should have questioned the accuracy of the separation payment.

DECISION

Former Air Force member Donald J.D. Hays, Sr., has asked us to reconsider our Claims Group denial of his request for waiver of the government's claim against him for funds he erroneously received upon separation from the service. We affirm our Claims Group settlement.

On March 27, 1990, Mr. Hays was discharged from the Air Force. Mr. Hays' final payment upon discharge included payment for 26.5 days of leave when he was only entitled to one-half day of leave. The amount of the overpayment is \$721.18.

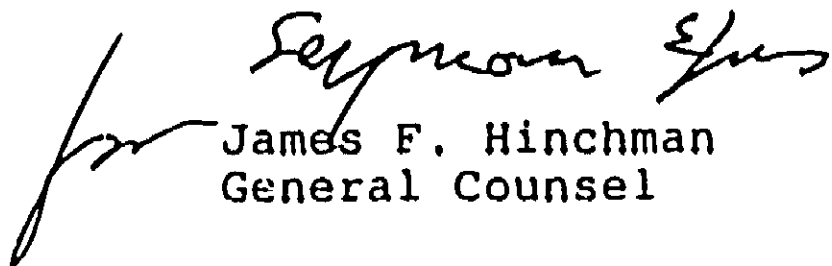
Section 2774(a) of Title 10, United States Code authorizes the Comptroller General to waive claims for erroneous payments to members or former members of the uniformed services, for pay and allowances, if collecting the claim would be against equity and good conscience, and not in the best interest of the United States. Further, waiver can only be granted if it is shown that the claim arose because of an administrative error, with no indication of fraud, fault, misrepresentation or lack of good faith by the member or any other person in accepting the overpayment. 10 U.S.C. § 2774(b)(1).

In his appeal, Mr. Hays states that, while the Claims Group denied the request for waiver because he should have realized that he was being overpaid, he did not know of the overpayment. He states that the only other time he was overpaid (when he continued to receive a variable housing allowance to which he was not entitled), he was aware of the

overpayment, took steps to have it stopped and his subsequent request for waiver was granted. If he had been aware of this overpayment, he states he would have taken similar steps.

The general rule is that a member is obliged to be aware of his approximate leave balance. James L. Grahl, B-239274, July 12, 1990. Mr. Hays should have been aware of his leave balance since he was on terminal leave. When his leave and earnings statement showed a leave balance of 26.5 days, he should have realized that this was incorrect. In these circumstances he must be considered at least partially at fault and waiver is precluded. Also, when Mr. Hays normal pay for a month was approximately \$1,400 and he received \$1,548.07 for 12.5 days, he should have realized an error had been made.

Accordingly, we affirm the settlement of our Claims Group.


James F. Hinchman
General Counsel