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DECISION



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

FILE: B-199071

DATE: July 16, 1980

MATTER OF: Technical Sergeant Joel C. Mayo (Deceased) and
Staff Sergeant Joseph J. Beyers, III (Retired)

DIGEST: Under 37 U.S.C. 501(f) and 1976 and 1977 appropriation acts payment for uniformed services members' accrued leave is limited to no more than 60 days' unused accrued leave during their military careers. No exceptions to that limit are provided which would authorize payment in excess of 60 days for an Air Force member who dies on active duty or retires on medical disability with more than 60 days' accrued leave. Also, claims for such leave do not contain such elements of legal liability or equity as would warrant submission to Congress under the Meritorious Claims Act, 31 U.S.C. 236 (1976).

The question presented is whether ~~payment may be made~~ for leave accrued in excess of 60 days to Air Force members Technical Sergeant Joel C. Mayo (Deceased), and Staff Sergeant Joseph J. Beyers, III (Retired), in light of the provisions of section 501(f), title 37, United States Code. Payment for accrued leave in excess of 60 days is precluded by section 501(f) and no exceptions to that provision are provided by law which would authorize payment in these cases in excess of 60 days.

The question is presented for an advance decision by Ernest E. Heuer, Chief, Accounting and Finance Division, Air Force Accounting and Finance Center, Denver, Colorado. The submission was approved by the Department of Defense Military Pay and Allowance Committee as submission number DO-AF-1347.

Sergeant Mayo and Sergeant Beyers were participants in the attempted rescue of Americans held hostage in Teheran, Iran. Sergeant Mayo died during the rescue operation. Sergeant Beyers was severely injured during the operation and was subsequently retired on medical disability.

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On July 6, 1977, the time of his discharge and reenlistment in the Air Force, Sergeant Mayo was paid for 45 days' accrued leave. At the time of his death, he had 35 days' accrued leave.

Sergeant Beyers was paid for 56 days' accrued leave on November 12, 1978, the time of his discharge and reenlistment in the Air Force. At the time of his retirement on medical disability he had 44 days of accrued leave.

Section 501, title 37, United States Code, as amended by section 304 of the Department of Defense Appropriation Authorization Act, 1977, Public Law 94-361, July 14, 1976, 90 Stat. 925-926, provides for payment for a member's unused accrued leave upon the member's discharge or death on active duty. Subsection (f) of section 501 states in pertinent part:

"The number of days upon which payment
* * * is based may not exceed sixty, less
the number of days for which payment has been
previously made * * * after the first day of
the second calendar month following the month
in which the Department of Defense Appropria-
tion Authorization Act, 1977, was enacted.
* * *"

Paragraph 40401 of the Department of Defense Military Pay and Allowances Entitlements Manual, implementing section 501, states that "Effective on 10 Feb 1976, a military member can be paid for no more than 60 days of accrued leave during his military career. Payments for accrued leave made before such date will be excluded from this 60-day limitation." That limitation is based on provisions in the 1976 and 1977 Department of Defense Appropriation Acts. See section 748, Public Law 94-212, February 9, 1976, 90 Stat. 176; and section 746, Public Law 94-419, September 22, 1976, 90 Stat. 1299.

In both Sergeant Mayo's and Sergeant Beyers' cases if payment were made for the number of days' accrued

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leave to their credit at the time of death or retirement, when combined with the days for which they were paid previously, the 60-day limit would be exceeded.

No exceptions to the limitations on payment for unused accrued leave are made which would authorize payment in excess of the 60 days in cases such as these regardless of the reason why accrued leave in excess of 60 days is not used. In defining "discharge", section 501(a) includes a member's separation or release from active duty under honorable conditions, and a member's death while on active duty. Thus, section 501(f) specifically includes payment for leave in the present situations.

The submission states that:

"The legislative history of the Section 501(f) accrued leave payment restriction indicates that the Congress imposed the restriction because of its concern that: payments for accrued leave were having the effect of encouraging members not to take leave, thereby adversely affecting troop morale and efficiency; and recurring payments for accrued leave were expensive. * * *"

While those are the reasons given for placing the limitations on payment for leave, neither the legislative history nor the statutes indicate any intention to make exceptions to those limitations in cases where a member does not use accumulated leave due to death or early retirement.

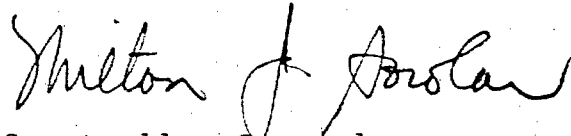
Therefore, there is no basis for us to authorize payment for more than the total of 60 days' leave (including the amounts for which they were paid at their previous discharges in 1977 and 1978) in either Sergeant Mayo's or Sergeant Beyers' case. Accordingly, the vouchers submitted will be retained here.

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Also requested if payment could not be authorized, was our advice as to the application of the Meritorious Claims Act, 31 U.S.C. 236 (1976). The Act provides that when a claim is filed in this Office that may not be lawfully adjusted by the use of an appropriation theretofore made, but which claim in our judgment contains such elements of legal liability or equity as to be deserving of the consideration of Congress, it shall be submitted to the Congress with our report of the facts and recommendation. The remedy is an extraordinary one and its use is limited to extraordinary circumstances.

The cases reported for the consideration of the Congress generally involve equitable circumstances of an unusual nature and which are unlikely to constitute a recurring problem, since to report to the Congress a particular case when similar equities exist or are likely to arise with respect to other claimants would constitute preferential treatment over others in similar circumstances. 53 Comp. Gen. 157, 158 (1973).

While we appreciate the sacrifices these members made, it is not unusual for members to be injured or killed in the performance of their duties and such situations are likely to recur. Thus, to report these claims to Congress under the Meritorious Claims Act would accord these individuals a preference over other members injured or killed on active duty. Therefore, we do not find the elements of unusual legal liability or equity which would justify our reporting these claims to the Congress for its consideration under the Meritorious Claims Act.



Acting Comptroller General
of the United States