

This decision was affirmed by the DoD Deputy General Counsel (Fiscal) on March 8, 2002.

August 3, 2000

In Re:

[Redacted]

Claimant

Claims Case No. 00060601

CLAIMS APPEALS BOARD DECISION

DIGEST

A member was retired from the Air Force in 1994, but his record was later corrected under 10 U.S.C. § 1552 to indicate that he was not retired, but remained on uninterrupted active duty. Repayment of the Lump Sum Leave payment he received in 1994 may be waived under 10 U.S.C. § 2774. Under 10 U.S.C. § 501(f), only 60 days of leave may be credited to his leave account.

DECISION

This is in response to an appeal of Defense Office of Hearings and Appeals (DOHA) Settlement No. 00042801, dated May 17, 2000. After the Defense Finance and Accounting Service (DFAS) calculated a financial settlement pursuant to correction of the member's military record by the Air Force Board for Correction Military Records (Board), the member requested waiver of repayment of a lump sum leave (LSL) payment for unused leave and reinstatement of 92.5 days of annual leave. In the Settlement, DOHA waived repayment of the LSL payment and denied reinstatement of the annual leave.

Background

The member was retired from the Air Force on September 1, 1994. At that time, he received an LSL payment of \$7,595.18 for 57.5 days of unused leave. On November 1, 1999, the Board corrected his record to show that he was not retired in 1994, but instead remained on active duty. Because the member's retirement did not occur, the LSL payment became an erroneous payment, and the member accrued 152.5 days of annual leave. DOHA waived the \$7,595.18 and credited the member with 60 days of annual leave. The member argues that the decisions cited in the Settlement do not apply to his situation, since they refer to members who were restored to active duty, and he was not. He argues that he should have received more than \$7,595.18 for the 57.5 days of LSL, since it was calculated at the rank of major, while under the record correction he was a lieutenant colonel on the date that the LSL payment was made. The member also

claims the additional 92.5 days of leave (152.5 minus 60).

Discussion

The Secretary of the Air Force, acting through the Board, may correct an Air Force member's record to correct an error or remove an injustice. *See* 10 U.S.C. § 1552. The purpose of a record correction is to put the member, to the extent possible, in the position he would have occupied if the error or injustice had not occurred. The financial settlement calculated by DFAS after a record correction has the same purpose regarding the member's financial position. The Comptroller General issued a series of decisions regarding the calculation of the financial settlement, and DOHA bases its decisions on the Comptroller General's decisions.

The factual situations in the Comptroller General decisions regarding record correction which are cited in the Settlement are similar to the situation of the member in the case before us. Those decisions involved members who were involuntarily separated from the military. Due to correction of their records, the separations were expunged, and their records after correction indicated that they served on uninterrupted active duty. *See, e.g., Lieutenant Colonel Louis D. Gaddini, AUS, B-195558, Jan. 6, 1981.* While the Comptroller General sometimes referred to the members in that situation as being "restored to active duty," their situations are comparable to that of the member before us, and the calculation of his financial settlement is governed by those decisions.

While the member contends that after correction the amount that he was paid for his LSL in 1994 was inadequate, the fact remains that the amount he actually received for his LSL in 1994 was \$7, 595.18. Our waiver authority covers only amounts actually paid, and we waived the amount which was paid. [\(1\)](#)

With regard to the additional 92.5 days of annual leave which the member claims, 37 U.S.C. § 501(f) prevents the crediting of more than 60 days to the member's leave account in any fiscal year. That limitation governs correction settlements. *See* 56 Comp. Gen. 587 (1977). While it is true that the member would have accrued 30 days per year, or a total of 152.7 days of leave between September 1, 1994 and November 1, 1999, he would not have been able to carry over more than 60 days from one fiscal year to the next. *See* 10 U.S.C. §701(b). Furthermore, it is Air Force policy to encourage members to take their accrued leave each year. *See* Air Force Instruction 36-3003, *Military Leave Program*, paragraph 4.1.4 (December 15, 1998). As a practical matter, it is unlikely that a member would serve for over five years without taking any annual leave, and we would not be able to speculate as to how much leave he might have taken. *See Gaddini, B-195558, supra.* [\(2\)](#) Therefore, we follow the Comptroller General's decision in 56 Comp. Gen. 587, *supra*, which allows the credit of only 60 days of leave .

Conclusion

We affirm the Settlement.

/s/

Jean E. Smallin

Acting Chairman, Claims Appeals Board

/s/

Arthur A. Elkins

Member, Claims Appeals Board

/s/

Michael H. Leonard

Member, Claims Appeals Board

1. Following a record correction, the primary purpose of waiver is to prevent a member from bearing a net indebtedness upon the finalization of the financial settlement, and waiver is routinely granted in that situation. *See* 57 Comp. Gen. 554 (1978). On a case-by-case basis other amounts such as LSL payments may be waived in the absence of net indebtedness. *Id.* Upon review of the facts in this case, we waived the LSL payment of \$7,595.18 even though the member did not have a net indebtedness.

2. In *Gaddini* the member was not reimbursed for any expenses which could not be reduced to a sum certain. An analogy could be made between the reimbursement of expenses in *Gaddini* and the crediting of leave days in the case before us.