



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

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October 4, 1973

Mr. Victor S. Mares
255 West 7th Street
San Pedro, California 90731

Dear Mr. Mares:

We have received your letters dated August 3, 1973, and a letter on your behalf dated August 1, 1973, from Mr. Ernest Montoya of the Legal Aid Foundation of Long Beach, California, both of which were addressed to the United States Navy Finance Center, Cleveland, Ohio, and were transmitted here by that Center. Those letters constitute, in effect, an appeal from the settlement dated June 11, 1973, of our Transportation and Claims Division which authorized payment to you of \$62.50 in base pay and subsistence for 25 days of unused leave which you had to your credit at the date of your discharge from the Navy, October 22, 1940. We have also received a letter dated August 13, 1973, from the Honorable Glenn M. Anderson, House of Representatives, concerning your case and transmitting here a copy of your letter of August 3, 1973, to the Navy Finance Center. We also acknowledge receipt of your letter dated September 11, 1973, concerning the same matter.

You say that you served in the Navy for 3 years and 8 months during the period February 23, 1937 through October 8, 1940, and that you were entitled to 30 days' leave per year during that period, a total of 110 days' leave. You say further that you received no leave during your service in the Navy and, therefore, you should be paid for the entire 110 days' leave, 85 days more than you were allowed under the June 11, 1973, settlement of this Office.

The Armed Forces Leave Act of 1946, approved August 9, 1946, ch. 931, 60 Stat. 963, as amended, which is the law authorizing settlement and compensation for leave in your case, provides in section 3 that each member of the armed forces shall be entitled to leave at the rate of 2 1/2 calendar days for each month of active service. That section also provides in pertinent part as follows:

" * * * Enlisted members or former enlisted members of the armed forces shall be considered to be entitled to such leave from and after September 8,

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1939, but shall not be considered to have any leave accumulated or accrued as of the date of the enactment of this Act, or the date of discharge if prior to such date of enactment, in excess of the amount which would have been accumulated and accrued if their leave had been accumulated and accrued from and after September 8, 1939, on the same basis as leave is accumulated and accrued in the case of commissioned officers * * *." (Emphasis added.)

While as you say the record shows that you enlisted in the Navy on February 23, 1937, and were honorably discharged on October 22, 1940, under the provisions of the Armed Forces Leave Act of 1946 cited above, you were entitled to accumulate leave only "from and after September 8, 1939," to the date of your discharge, October 22, 1940, a period of 1 year, 1 month and 15 days. You were not entitled to accumulate leave credits for any active service period prior to September 8, 1939.

The record in your case indicates that during the periods of August 6 to September 5, 1940 (31 days), and September 17 to October 4, 1940 (18 days), a total of 49 days, you were absent from duty at the Norfolk Naval Hospital on account of sickness due to your own misconduct. Such lost time may not be included in active service for leave computation purposes, therefore, your active service for leave computation of 1 year, 1 month and 15 days must be reduced by 49 days. Thus, at the date of your discharge you had a net total of 11 months and 26 days' service for leave computation purposes which, when multiplied by 2 1/2 days' leave creditable each month, entitled you to 30 days' leave. However, the record further indicates that while you were assigned to the U.S.S. Black Hawk you received 5 days' annual leave during the period from December 23 to 28, 1939, which must be subtracted from the 30 days' leave which you earned, leaving 25 days' leave to your credit at the date of your discharge.

Under the provisions of section 4(a) of the Armed Forces Leave Act of 1946 you were entitled to be compensated for the 25 days' leave at the rate of the base and longevity pay to which you were entitled on the date of your discharge (seaman first class, fifth pay grade - \$54 per month), or \$45, plus a subsistence allowance of 70 cents a day for \$17.50, making a total payment to which you were entitled of \$62.50. Since that is the amount which you received under the settlement of June 11, 1973, you have been paid the full amount to which you

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were entitled and, therefore, the settlement is sustained. The Honorable Glenn M. Anderson is being advised of this action.

Sincerely yours,

Paul G. Denbling

For the Comptroller General
of the United States