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

B-195697 (HID)

SEP 13 1979

[Repayment of Lump-Sum Leave]

The Honorable Bo Ginn *Ronald*
House of Representatives

Dear Mr. Ginn:

We refer to your letter dated July 26, 1979, on behalf of Mrs. Helen H. Burdette of Village Green Apartment 20, St. Simons Island, Georgia, concerning her lump-sum leave repayment resulting from her reentering the Government service after receiving a lump-sum payment for annual leave at the time of her separation from the Department of the Army. *AGC00020*

Mrs. Burdette resigned her position with the Department of the Army effective July 25, 1978, and was reemployed by the Navy *AGC00001* effective August 28, 1978. Mrs. Burdette received a lump-sum payment for annual leave at the time of her resignation pursuant to 5 U.S.C. § 5551 which requires that an employee be paid for accumulated and accrued annual leave upon separation. However, she was reemployed by the Navy prior to the time that the period of the annual leave for which she received the payment would have expired. Section 6306 of title 5, United States Code, provides that upon reemployment of an individual prior to the expiration of the period covered by a lump-sum leave payment he shall refund an amount equal to the pay for the period between the date of reemployment and the expiration of the lump-sum period. Therefore, Mrs. Burdette was required by 5 U.S.C. § 6306 to refund an amount equal to the pay covering the period between the date of reemployment and the expiration of the lump-sum period.

Although Mrs. Burdette may not have accepted her appointment with the Department of the Navy had she been aware of the refund requirement for the unexpired portion of her annual leave, nevertheless, the above statutory provisions do not permit exceptions. B-171325, February 2, 1971, copy enclosed.

Further, we point out that the amount in question may not be regarded as an erroneous payment under 5 U.S.C. § 5584 which provides for the waiver of erroneous payments of pay and for refund of any amount so waived. This is so because the lump-sum payment for leave in this case was proper when made and, therefore, may not be considered now as an erroneous payment within the meaning of the statutory provisions

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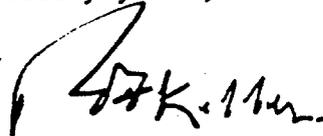
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for waiver. Accordingly, we have no basis for waiving the liability for repayment of the indebtedness. B-171325, supra.

Regarding payment of the refund by installments we have uniformly held that the lump-sum leave law, now codified in 5 U.S.C. § 6306 (1976), contemplates an immediate refund of that part of the lump-sum payment which is to be refunded and such requirement ordinarily should be a condition precedent to reemployment. B-176168, September 1, 1972, and February 13, 1975; 34 Comp. Gen. 17, 19 (1954) and decisions cited therein. However, we have permitted collection of such refund by installments. B-176168, supra, and 34 Comp. Gen. 17, supra.

In view of the above, the agency action in this matter appears to be proper. We regret that we could not reach a determination more favorable to your constituent.

Sincerely yours,



Deputy Comptroller General
of the United States

Enclosure