

DECISION

095298
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548
30591

FILE: B-182608

DATE: FEB 27 1975

MATTER OF: Arden D. Haeffner - Annual leave restoration -
Administrative error

DIGEST: Employee resigned August 18, 1973, and forfeited 93 hours of annual leave in excess of maximum amount payable in lump sum under 5 U.S.C. §5551(a). Claim for payment for lost leave on basis that agency failure to inform employee of limitation is administrative error under Public Law No. 93-181, is denied since act provides relief only for annual leave lost by operation of 5 U.S.C. §6304, which limits annual leave carryover to new leave year. However, if employee's separation is determined by his agency not to be in conformance with established agency policy, applicable regulations, or intent of parties, no objection would be made to employee's restoration to rolls for purposes of payment of leave.

This action is in response to a letter of November 1, 1974, from Orris C. Huet, an authorized certifying officer of the United States Department of Agriculture, forwarding a memorandum from the Forest Service, Rocky Mountain Forest and Range Experiment Station, concerning the claim of Mr. Arden D. Haeffner, a former Forest Service employee. Mr. Haeffner claims reimbursement for that portion of his accrued annual leave balance not included in the lump-sum leave payment he received upon his resignation on August 18, 1973. While he received reimbursement for 240 of the 333 hours of accrued annual leave to his credit at the time of his separation, he was required to forfeit 93 hours of annual leave pursuant to 5 U.S.C. §5551(a) (1970), which prohibits a lump-sum payment for any accrued annual leave in excess of 30 days (240 hours) or the number of days carried over to an employee's credit at the beginning of the leave year.

The Forest Service states that Mr. Haeffner was not informed of the above provision of law. Mr. Haeffner has maintained that he was unaware that he would not be reimbursed for all accrued annual leave to his credit upon his separation. Mr. Huet questions whether the failure of the Forest Service to so inform Mr. Haeffner constitutes an administrative error within the meaning of Public Law No. 93-181, 87 Stat. 705, approved December 14, 1973. If the answer to the preceding question is in the negative, it is asked whether there is any general authority whereby the 93 hours of forfeited leave may be restored.

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Public Law No. 93-181 amended title 5, United States Code, to provide for the restoration of lost annual leave under certain prescribed circumstances. The relevant provisions concerning restoration of annual leave due to administrative error are contained in sections 3 and 5 of the act, and are quoted in pertinent part below:

"SEC. 3. Section 6304 of title 5, United States Code, is amended—

* * * * *

"(2) by adding at the end thereof the following new subsection:

'(d)(1) Annual leave which is lost by operation of this section because of—

'(A) administrative error when the error causes a loss of annual leave otherwise accruable after June 30, 1960

* * * * *

shall be restored to the employee.

* * * * *

'(e) Annual leave otherwise accruable after June 30, 1960, which is lost by operation of this section because of administrative error and which is not credited under subsection (d)(2) of this section because the employee is separated before the error is discovered, is subject to credit and liquidation by lump-sum payment * * *.'

"SEC. 5. With respect to a former employee * * * who is not on the rolls on the date of enactment of this Act, annual leave which accrued after June 30, 1960, but, because of administrative error was lost by operation of section 6304 of title 5, United States Code, is subject to credit and liquidation by lump-sum payment * * *." (Emphasis added.)

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The law is clear and unambiguous in stating that relief under the cited sections may be provided only where annual leave was lost by operation of 5 U.S.C. §6304 (Supp. III, 1973). This is explained in S. Rep. No. 491, 93d Cong., 1st Sess. 3 (1973) as follows:

"Under existing provisions of section 6304 most employees carry forward from one leave year to the next a maximum of 30 days of annual leave. Any leave in excess of 30 days which is not used by an employee before the start of the new leave year is forfeited by operation of section 6304(a) regardless of the reasons for the employee's failure to use such leave.

"Paragraph (1) of the new section 6304(d), as added by section 3 of the bill, provides that annual leave lost by operation of section 6304 because of administrative error * * * shall be restored to the employee's leave account."
(Emphasis added.)

As stated above, Mr. Haeffner's forfeiture of annual leave was by operation of 5 U.S.C. §5551(a) (1970), and not by operation of 5 U.S.C. §6304 (Supp. III, 1973). Accordingly, Public Law No. 93-181 is not applicable to this situation and, therefore, Mr. Haeffner may not be reimbursed for the lost leave under the provisions of that act.

Concerning the second question as to whether there is any general authority by which an agency may restore annual leave forfeited under the circumstances stated herein, we have long followed the rule that when an authorized separation becomes an accomplished fact, it may not be rescinded or set aside by administrative action for the sole purpose of restoring lost leave. 32 Comp. Gen. 111 (1952). However, we have recognized exceptions to that rule and have permitted restoration to the rolls for the period of unused annual leave when the separation was not in conformance with established agency practice, applicable regulations, or the intent of the parties. B-172452, June 2, 1971, B-172997, June 23, 1971, B-173632, August 3, 1971, and B-177057, January 23, 1973.

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In the instant case neither Mr. Huet's letter nor the enclosures contained therein provide us with any information that would justify a finding that the separation was improper, and in the absence of such finding his leave may not be restored. However, if the agency should determine on reconsideration, that this case fits one of the above exceptions, we would not object to Mr. Haeffner's restoration to the rolls for the purpose of permitting payment of the 93 hours leave involved in this case with the accruals thereon incident to an extension of his pay status. Also, if restoration action is taken appropriate corrections in Mr. Haeffner's service record should be made. The second question is answered accordingly.

R.F. KELLER

Deputy Comptroller General
of the United States