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DECISION



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

B-184008

MAR 7 1977

FILE: Helen Wakus - "Buy back" of annual leave

MATTER OF:

DIGEST: Employee who used annual leave to recuperate from on-the-job injury is entitled, pursuant to 20 C.F.R. 10.310 (1975), to "buy back" leave so used. However, leave record must be reconstructed from time leave was used, and annual leave reinstated as result of "buy back" is subject to forfeiture rule of 5 U.S.C. 6304(a) if in excess of maximum permissible carry-over.

This decision is in response to a request dated February 17, 1976, by the Finance and Accounting Officer of the Army Finance Center, Indianapolis, Indiana, concerning the claim of Miss Helen Wakus, a civilian employee of the Army to buy back and reinstate to her leave account the purchased annual leave. Miss Wakus sustained an on-the-job injury on December 11, 1968, which required her use of 280 hours of sick leave and 344 hours of accrued annual leave from the pay period ending December 21, 1968, through August 31, 1970. Annual leave was used in lieu of sick leave in order to avoid forfeiture.

Upon approval of her workers' compensation, by the Department of Labor under the Federal Employee's Compensation Act, 5 U.S.C. 8101 et seq., Miss Wakus bought back 280 hours previously charged to sick leave. She now seeks to also buy back and have reinstated the 344 hours of annual leave used during the period. During this period, however, Miss Wakus maintained her maximum allowable annual leave balance of 370 hours; she has, therefore, been advised by the Army that all reinstated annual leave would become excess and subject to forfeiture in the reconstruction of her leave record.

An employee may "buy back" paid leave used in conjunction with a work related injury pursuant to 20 C.F.R. 10.310 (1975), which states in pertinent part that:

"An employee may decide to take sick and/or annual leave in order to avoid possible interruption of income. If such employee does so decide and his or her claim for compensation is subsequently approved, such employee may

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arrange with his or her employing establishment to 'buy back' the leave used and have it reinstated to such employee's account. * * * (Emphasis added.)

Because Miss Wokus elected to take annual leave, and her claim for compensation was approved, she is entitled, according to the above-quoted regulation, to buy back the 344 hours of annual leave which she used in recuperating from her injury. Whether the annual leave thus reinstated may be used, however, should be considered by the employee in determining whether to make such a purchase.

An employee's accumulation of annual leave is, with certain exceptions, limited by 5 U.S.C. 6304(b) (Supp. III, 1973) as follows:

"* * * annual leave provided by section 6303 of this title, which is not used by an employee, accumulates for use in succeeding years until it totals not more than 30 days at the beginning of the first full biweekly pay period, * * *, occurring in a year."

The effect of this provision is to require forfeiture of any annual leave in excess of the maximum permissible carry-over at the beginning of the new leave year. For Miss Wokus, the maximum carry-over balance was 370 hours. Public Law 93-181, effective December 24, 1973, added the following exception to the forfeiture rule of 5 U.S.C. 6304:

"(d)(1) Annual leave which is lost by operation of this section because of -

* * * * *

(C) sickness of the employee when the annual leave was scheduled in advance;

shall be restored to the employee." (Emphasis added.)

Leave restored under this section is retained in a separate leave account for the employee's use within a time period prescribed by Civil Service Commission regulations, 5 U.S.C. 6304(d) (2) (Supp. III, 1973).

This exception to the forfeiture rule, however, is not applicable in the present case. In order to be available for "buy back," annual leave must have been used, rather than forfeited. In our decision B-184307, October 21, 1975, we held that annual leave actually used by an employee in a manner to which the employee was entitled was not

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forfeited, and therefore could not be restored under Public Law 93-181. Unlike leave restored under 5 U.S.C. 6304(d), leave reinstated under a "buy back" arrangement is not credited to a separate leave account.

Therefore, any annual leave that Miss Wokus might buy back would be recredited to her account as of the time it was used. In the reconstruction of her leave record, annual leave reinstated in excess of her maximum permissible carry-over would be subject to the forfeiture requirement of 5 U.S.C. 6304(a), *supra*. Since Miss Wokus maintained her maximum carry-over balance during the period involved, the reinstated annual leave would be required to be forfeited.

R. F. KELLER
Acting Comptroller General
of the United States