

DOCUMENT RESUME

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[Restoration of Forfeited Annual Leave]. B-182608. August 9, 1977. 3 pp.

Decision re: Betty J. Anderson; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation (305).

Contact: Office of the General Counsel: Civilian Personnel.
Budget Function: General Government: Central Personnel Management (805).

Organization Concerned: Department of Housing and Urban Development: San Francisco Area Office, CA.

Authority: Federal Employees' Compensation Act (5 U.S.C. 8101 et seq.). (P.L. 93-181; 87 Stat. 705). 5 U.S.C. 6304 (Supp. V). 20 C.F.R. 10.310. 5 C.F.R. 630.306. B-166538 (1969). B-160826 (1967). B-184008 (1977).

Donald E. Muldoon, Director, Accounting Division, Region IX, Department of Housing and Urban Development, requested an advance decision regarding whether an employee may have restored to her leave account certain amounts of annual leave which were forfeited upon her acceptance of compensation for a work-related injury. The annual leave which was reinstated as a result of "buy back" is subject to the forfeiture rule since it was used rather than forfeited and since it is not credited to a separate leave account. (Author/SC)

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DECISION



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

FILE: B-182608

DATE: August 9, 1977

**MATTER OF: Betty J. Anderson - Restoration of forfeited
annual leave**

DIGEST: Employee who used annual leave and sick leave in late 1973 and early 1974 to recuperate from work-related injury decided to "buy back" leave and accept compensation for injury under Federal Employees' Compensation Act. Annual leave reinstated as a result of "buy back" is subject to forfeiture rule in 5 U.S.C. 6304(a) since it was used rather than forfeited and since it is not credited to separate leave account. See Helen Wakus, B-184003, March 7, 1977.

This action is in response to the request of July 15, 1975, for an advance decision from Donald E. Muidoon, Director, Accounting Division, Region IX, Department of Housing and Urban Development (HUD), regarding whether Mrs. Betty J. Anderson, a HUD employee, may have restored to her leave account certain amounts of annual leave which were forfeited upon her acceptance of compensation under the Federal Employees' Compensation Act, 5 U.S.C. 8101 et seq., for a work-related injury.

The record indicates that Mrs. Anderson was unable to work from October 3, 1973, through February 12, 1974, due to illness and that during this period she used 318 hours of sick leave and 382 hours of annual leave. Mrs. Anderson filed a claim with the Office of Federal Employees' Compensation which issued a final determination on September 16, 1974, that her illness and resulting disability were work-related. In order to receive employee's compensation Mrs. Anderson had to "buy back" the leave she had used and substitute leave-without-pay (LWOP) for that period. See 20 C.F.R. 10.310 (1976). Therefore, in order to refund to HUD the amount of money representing the leave she had used (\$4,662.84), Mrs. Anderson transferred her payment from the Department of Labor (\$3,348.28) to HUD and paid the balance (\$1,314.56) in installments of \$50 per pay period, ending May 23, 1975. At that time HUD refunded the annual and sick leave used and in reconstructing her leave accounts found that Mrs. Anderson exceeded the 240 hour annual leave ceiling by 112 hours in leave year 1973 and by 101 hours in leave year 1974.

The administrative report indicates that Mrs. Anderson chose to use annual leave in lieu of sick leave to avoid a loss of income during the period, to avoid a forfeiture of annual leave, and to

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avoid request for advance sick leave which would have required over 2 years of sick leave accruals to repay. We note that Mrs. Anderson had nearly exhausted her accumulated and accrued sick leave by early December 1973, so that to continue in a pay status she had to either request and receive advance sick leave or use her accumulated annual leave. The administrative report also states that there is every indication that Mrs. Anderson could have and probably would have scheduled annual leave for leave year 1973 to avoid a forfeiture, and the report notes that the forfeiture of annual leave in 1974 was unavoidable since the leave was not available for use until she completed her repayments to HUD in May 1975.

Under the provisions of 5 U.S.C. 6304(b) (Supp. V, 1975), an employee may not carry-over more than 30 days or 240 hours (or the amount of their personal leave ceiling), of accumulated annual leave into the next leave year, and annual leave in excess of this limitation is forfeited. However, with the passage of Public Law 93-181, approved December 14, 1973, 87 Stat. 705, such forfeiture may be avoided if the annual leave is lost because of administrative error or the exigencies of public business or the sickness of the employee when the annual leave was scheduled in advance. 5 U.S.C. 6304(d)(1). Leave restored under this provision is credited to a separate leave account and must be used within the time prescribed by Civil Service Commission regulations. See 5 U.S.C. 6304(d)(2) and 5 C.F.R. 630.306 (1977).

The question presented is not whether the leave Mrs. Anderson used during the period of her illness may be restored to her leave account, but whether, once the leave is restored, any excess leave over the 240 hour ceiling (or personal ceiling) would come under the exceptions to the forfeiture rule. Mrs. Anderson did not forfeit any annual leave at the end of leave years 1973 or 1974 until those leave years were reconstructed in May 1975 and annual leave previously used was recredited to her leave account.

Prior to the passage of Public Law 93-181, our Office held that, where there were no exceptions to the forfeiture rule, an employee in a situation similar to that of Mrs. Anderson should "buy back" only as much annual leave as would avoid forfeiture. B-166538, April 28, 1969. See also B-160826, March 8, 1967. In addition, we recently held that the exceptions to the forfeiture rule are not applicable in a situation involving the "buy back" of annual leave. Helen Wakus, B-184008, March 7, 1977. In Wakus we held that annual leave actually used to recuperate from an on-the-job-injury and then restored as a result of "buy back" is not considered forfeited so as to be subject to restoration under the provisions of 5 U.S.C. 6304(d)(1). We also noted in Wakus that

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leave restored under "buy back" is not credited to a separate leave account. Therefore, since Mrs. Anderson did not originally forfeit annual leave in leave years 1973 and 1974 but rather used annual leave and then had the leave recrdited under a "buy back" arrangement, we conclude that the reinstated annual leave would be subject to forfeiture.

If Mrs. Anderson now wishes to avoid forfeiture, we would have no objection to her being placed on annual leave for the requisite number of hours so as to avoid forfeiture in leave years 1973 and 1974. Mrs. Anderson would have to refund to the Department of Labor that portion of employees' compensation covered by that leave.

Accordingly, the leave subject to forfeiture may not be restored to the employee's leave account under the provisions of 5 U.S.C. 6304(d).


Deputy Comptroller General
of the United States