

DOCUMENT RESUME

C3813 - [B2914176]

[Repayment for Excess Leave Charges]. B-187692. October 13, 1977. 3 pp.

Decision re: Delores J. Copelanc; by Paul G. Desbling, Acting 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 Labor.

Authority: Annual and Sick Leave Act (P.L. 93-181, sec. 4; 87 Stat. 706). 5 U.S.C. 6302 (f) (Supp. V). 5 U.S.C. 5584 (Supp. V). S. Rept. 93-491. H. Rept. 93-456. P.P.M. Letter 630-22. 4 C.F.R. 91.

Alfred M. Zuck, Comptroller, Department of Labor, requested an advance decision regarding repayment of an employee's excess leave charges. The agency requested cash reimbursement and the employee asked for a reduction of her current leave balance. The employee may elect the method of repayment even though she may have been aware of the leave overcharge at the time it occurred. (Author/HTW)

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DECISION



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

FILE: D-187692

DATE: October 13, 1977

MATTER OF: Delores J. Copeland -- Repayment for excess leave charges

DIGEST: Leave record audit requested by employee revealed annual leave charges which exceeded leave accruals for two prior years. Employee may elect method of repayment under 5 U.S.C. 6302(f) even though she may have been aware of overcharge at the time it occurred. Employee's actual or constructive knowledge of error is relevant only when waiver of the overpayment is considered under 5 U.S.C. 5584.

This action is in response to a request for an advance decision from Alfred M. Zuck, Comptroller, U.S. Department of Labor, regarding the repayment of excess leave charges taken by Mrs. Delores J. Copeland, a Labor employee.

The administrative report states that, as a result of a leave record audit requested by the employee, the agency discovered in November 1976, that Mrs. Copeland had taken 16 hours of annual leave in 1974 and 15 hours of annual leave in 1975 in excess of that available for her use in those years. The agency requested cash reimbursement for the overdrawn leave, but Mrs. Copeland asked that excess leave be repaid through a reduction of her current annual leave balance pursuant to 5 U.S.C. 6302(f) (Supp. V, 1975). The administrative report states further:

"The results of our audit did not conflict adversely with the records maintained by Mrs. Copeland; in fact, according to her, the leave usage reflected in the official payroll records was understated by four hours. It is felt, therefore, that Mrs. Copeland had been aware of her leave status during 1974 and 1975."

Since subsection 6302(f) refers to "administrative error" and since the agency considers the excess leave charges were not due to "administrative error," the agency questions whether it may permit the employee to repay the excess leave charges through a reduction of her current annual leave balance.

Subsection f of Section 6302 of title 5, United States Code, provides as follows:

B-187692

"An employee who uses excess annual leave credited because of administrative error may elect to refund the amount received for the days of excess leave by lump-sum or installment payments or to have the excess leave carried forward as a charge against later-accruing annual leave, unless repayment is waived under section 5584 of this title."

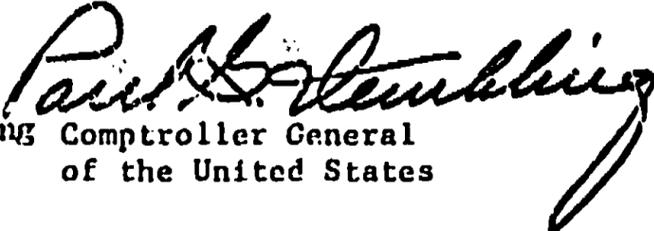
This provision was added as a new subsection to Section 6302 under the 1973 Amendments to the Annual and Sick Leave Act, Pub. L. 93-181, § 4, 87 Stat. 706 (1973). Our review of the legislative history indicates that the purpose of this provision was to permit an employee the option of repaying an overcharge of leave by lump-sum or installment cash payments or by a charge against current or later accruing annual leave where formerly there was no authority for repayment by charging future leave earnings. See S. Rep. No. 93-491, 93d Cong., 1st Sess. 2, 4 (1973); and H.R. Rep. No. 93-456, 93d Cong., 1st Sess. 3, 7, 9 (1973). See also Federal Personnel Manual Letter No. 630-22, January 11, 1974, 13-14 (Attachment). We construe the term "administrative error" in this provision to mean the error on the part of the agency in failing to maintain accurate records of leave accruals and charges which would have revealed the overcharge at the time it occurred.

The agency considers the apparent knowledge by Mrs. Copeland as precluding her from choosing the method to repay the excess leave charges under 5 U.S.C. 6302(f). However, it is our view that, absent any indication of fraud or other wrongdoing, an employee may elect the method of repayment under subsection 6302(f) even though that employee is aware or has reason to know that leave charges exceed current leave balances. The employee's actual or constructive knowledge of the overcharge at the time it takes place is questioned only where waiver of the repayment is considered under the provisions of 5 U.S.C. 5584 (Supp. V, 1975) and 4 C.F.R. Part 91 (1977). In that regard our decisions have held that if the employee had actual or constructive notice of the error at the time of accepting the overpayment, collection action would not be viewed as being against equity and good conscience or against the best interests of the United States.

Accordingly, we conclude that the overcharges of leave were the result of administrative error and that the

B-187692

employee may elect to repay by the methods set forth in 5 U.S.C.
6302(f).


Acting Comptroller General
of the United States