

DOCUMENT RESUME

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[Request for Waiver of Erroneous Payment of Pay], B-189975.
October 19, 1977. 5 pp.

Decision re: Joseph T. Sere; by Milton Socolar (for Rimer B. Staats, 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: Defense Communications Agency.

Authority: 5 U.S.C. 6302(f). 5 U.S.C. 5584. B-188181 (1977).

B-185035 (1976). F.P.M. Supplement 990-2, Book 630, subch. 511-5.

A Federal employee requested reconsideration of the denial of his request for waiver of an erroneous payment of advanced annual leave. The employee was not entitled to have his indebtedness for the excess payments waived since he should have been aware that there was an error and he therefore had a duty to report it to the appropriate officials. The employee may elect to have the excess leave carried forward as a charge against later accruing annual leave. (Author/SC)

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C.P.



DECISION

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

FILE: B-189975

DATE: October 19, 1977

MATTER OF: Joseph T. Sere - Request for waiver of erroneous payment of pay

- CIGEST:**
1. Employee who was granted advance of annual leave and was erroneously paid for 57 hours of annual leave in excess of the amount which was advanced to him is not entitled to have his indebtedness for the excess payments waived since he should have been aware that there was error and he therefore had a duty to report it to appropriate officials.
 2. Under 5 U.S.C. 6302(f) an employee who uses excess annual leave credited because of an administrative error may elect to have the excess leave carried forward as a charge against later accruing annual leave.

This decision is in response to an appeal from a denial of our Claims Division of a request for waiver of an erroneous payment made to Mr. Joseph T. Sere, an employee of the Office of Education, Training and Career Development, Defense Communications Agency, Washington, D.C.

The record shows that on April 24, 1975, Mr. Sere requested and was subsequently granted an advance of 114 hours of annual leave. As a result of an administrative error, Mr. Sere was paid for 57 hours of annual leave in excess of the amount of the hours of annual leave that he would earn during the year 1975. These hours should have been charged as leave without pay and Mr. Sere's psy check should have been adjusted accordingly. Mr. Sere argues that the overpayment was not a result of any fault or bad faith on his part and that therefore his indebtedness to the Government should be waived under 5 U.S.C. 5584.

Our Claims Division, in its denial on March 3, 1977, of the request for waiver, found that even though there was no evidence of bad faith, fraud or misrepresentation on the part of Mr. Sere, he should have been aware that he had used annual leave in excess of that which had been advanced to him and in excess of that which he could expect to accrue

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during the year of 1975 because he was in receipt of leave and earnings statements during the period in which the erroneous payments were made.

The waiver of erroneous payment of pay is governed by section 5584 of title 5, United States Code, which provides in pertinent part as follows:

"(a) A claim of the United States against a person arising out of an erroneous payment of pay * * * to an employee of an agency, the collection of which would be against equity and good conscience and not in the best interests of the United States, may be waived in whole or in part by--

"(1) the Comptroller General of the United States * * *

* * * * *

"(b) The Comptroller General * * * may not exercise his authority under this section to waive any claim--

"(1) if, in his opinion, there exists, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim * * *."

In B-188181, June 24, 1977, we held that an employee who knew that he was being credited with annual leave to which he was not legally entitled and who used this unearned leave anyway, was not free from fault and, therefore, was not entitled to have his indebtedness to the Government for this overpayment waived, even though he attempted to rectify the problem on a number of occasions and had been informed that the problem had been corrected when, in fact,

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it had not been. We have also denied a waiver of excess payments when an employee reasonably should have been aware that there was an error in his annual and sick leave balances. In such a case, we have held that the employee has a duty to report the error to appropriate officials for a correction. B-185035, July 12, 1976.

In light of the above decisions, we are unable to find that Mr. Sere was without fault in that he either knew or reasonably should have known that he was being paid for annual leave to which he was not legally entitled. Mr. Sere argues that his earnings and leave statements did not clearly indicate the amount of annual leave he had taken during 1975, and that he, therefore, could not have known that he had used up his advance leave. In his letter appealing the decision of our Claims Division he states:

"There were numerous examples of payroll confusion in the earnings and leave statements. Despite the April advances of 114 hours, my checks in 1975 were shorted on several occasions. In my 4/26/75 and 5/10/75 statements, my pay was shorted 15 hours. My 10/11/75 check was shorted 17 hours, and my 12/20/75 check was shorted 24 hours. Supplemental payments were mixed in between. I noticed these errors on my earnings and leave statements and constantly complained to the Civilian Personnel Office about them."

According to the Defense Communications Agency, the first two pay checks to which Mr. Sere refers were short a total of 15 hours because of initial adjustment problems which were corrected, and for which he was paid when the payroll clerk handling Mr. Sere's time cards used the code 2/78 on the card to indicate to the key-punch operator that advance leave had been approved. During the pay period ending October 11, 1975, the code was not used and Mr. Sere was charged for 17 hours of leave without pay. By now, Mr. Sere had used up all but 10 hours of his advance leave and should have had 7 hours deducted from his pay check as leave without pay instead of 17 hours. On Mr. Sere's objection to his reduction in pay, the clerk in the civilian pay section who handled his time cards attempted to correct the situation. However, instead of reinstating 10 hours of annual leave, which was the remainder of advance leave to which Mr. Sere was entitled, the clerk reinstated all 17 hours and a supplemental payment was made accordingly.

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At this point, both the clerk and Mr. Sere should have been aware that Mr. Sere's advance of annual leave for 1975 had expired and that all subsequent time away from work should be charged as leave without pay. For the next 4 pay periods, however, the code to indicate advance leave was placed on Mr. Sere's time cards and erroneous payments were made for leave that was taken. By December of 1975, the clerk realized that an error had been made and that Mr. Sere had been paid for 57 hours of leave more than he would earn for the remainder of the year, for a total overpayment of \$680.28. The 24 hours of leave taken by Mr. Sere in the pay period ending December 20, 1975, were properly charged as leave without pay and deducted from his paycheck.

In view of the fact that Mr. Sere was able to understand his earnings and leave statements sufficiently to complain when he thought they were incorrect and because he should have known from October of 1975, that his advance leave had expired, we are unable to find Mr. Sere free from fault in this matter. Our position is supported by a statement made by Mr. Sere's former timekeeper in September 1975, to the effect that "he went over his time cards very carefully to be sure they agreed with his records before he would initial them." Thus, we are unable to waive Mr. Sere's indebtedness to the Government.

Originally, Mr. Sere proposed to repay the excess leave used by offsetting that amount against the leave he would earn in 1976. Subsection (f) of section 6302 of title 5, United States Code, provides as follows:

"(f) 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."

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Since the overpayment which was made to Mr. Sere was a result of administrative error, we can find no reason to deny Mr. Sere the option of carrying the excess leave forward as a charge against later accruing annual leave as provided by 5 U.S.C. 6302(f).

Finally, Mr. Sere requests our decision in another matter concerning his request for 15 hours of administrative leave during "impassable ice conditions" at his subdivision which caused him to be late for work. He states that he was only granted 2 hours of administrative leave. The Federal Personnel Manual Supplement 990-2, Book 630, subchapter S11-5, provides that agencies may excuse employees from duty without charge to leave and may by administrative regulation place any limitations they feel are needed with respect to administrative leave. This matter is entirely discretionary with the individual agency involved.

For the foregoing reasons, we hereby sustain the action of our Claims Division.

Milton J. Fowler
for Comptroller General
of the United States