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DECISION



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

FILE: B-188993

DATE: December 12, 1977

MATTER OF: Patrick J. Quinlan - Forfeited and Restored Annual Leave

DIGEST: Upon separation, January 4, 1977, employee seeks further restoration and lump-sum payment for 160 hours of unused forfeited and restored 1973 leave which was forfeited again at end of 1975 leave year, on grounds he intended to use but agency erroneously charged regular leave account, or he was prevented from using by illness. Claim must be denied. Once forfeited and restored leave is forfeited again, there is no legal authority for its further restoration or to pay for it.

By letter dated March 1, 1977, Mr. W. F. Grice, Accounting and Finance Officer, Defense Depot Memphis, Defense Logistics Agency, requests a decision as to whether Mr. Patrick J. Quinlan, who retired on disability on January 4, 1977, is entitled to a lump-sum payment for 160 hours of forfeited and restored 1973 annual leave which was forfeited again at the end of the 1975 leave year.

The relevant circumstances insofar as can be determined from the file appear to be as follows. After being evacuated from Vietnam under emergency conditions in April 1975, Mr. Quinlan was temporarily assigned to MacDill Air Force Base, Florida, for approximately 2 months. During this period he used 6 days or 48 hours of annual leave. On June 29, 1975, he was assigned to the Defense Property Disposal Office, Tinker Air Force Base, Oklahoma. A Record of Leave Data was received from his former employing office on August 18, 1975, indicating that he had to his credit 160 hours of restored annual leave for the 1973 leave year, 8 hours restored for the 1974 leave year, and 376 hours of regular annual leave. A corrected leave record was received January 15, 1976, changing the 1974 restored leave from 8 to 96 hours. At issue here as previously indicated, is the 160 hours of 1973 leave.

It is stated in the file that there is no record of the date or the basis of the restoration of the 1973 leave, but that it is assumed that the reason for not using the leave was the exigencies of the public business. However, it is further stated in the file that the record does show that this leave had to be used by

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January 1, 1976, or January 4, 1976. Presumably this means the leave had to be used by the end of the 1975 leave year.

After Mr. Quinlan was assigned to the Defense Property Disposal Service effective June 29, 1975, he earned during the remainder of the 1975 leave year 116 hours of annual leave and used 153 hours, apparently in July and August before his Record of Leave Data was received at Tinker AFB. Additionally he scheduled 128 hours of annual leave for use in December 1975, but this leave was not used because he became ill and was placed on sick leave from October 30, 1975, until his disability retirement on January 4, 1977. It is stated in the file that leave requests and Time and Attendance Records indicate that regular rather than restored annual leave was requested and granted for the 153 hours and that there is no record that Mr. Quinlan scheduled or used any restored leave during the 1975 leave year. It is further stated that the employing agency did not schedule this restored leave for use by the employee or maintain it in a separate account as provided by the governing law and regulations. However it is noted that the file contains a Statement of Employees Leave Account as of March 29, 1975, which shows the restored leave and the date by which it must be used, separate and apart from the regular annual leave.

Mr. Quinlan apparently does not agree that he requested the leave used at MacDill and Tinker during the 1975 leave year be charged against his regular annual leave balance and contends that it should have charged against his restored leave balance. He states that when he became aware of what had happened he made efforts to have the matter corrected and was led to believe that this had been accomplished. However, upon receiving his leave and earning statement for the period ending January 24, 1976, he discovered that the 1975 leave used remained charged to his regular leave balance. He again attempted to have the matter straightened out and was ultimately advised that this leave had been again forfeited because it had not been used by the end of the 1975 leave year - but that he might apply to have it restored again because of extenuating circumstances. This he did and the matter has been referred to this Office for resolution.

Insofar as can be determined there is nothing in the file to show that Mr. Quinlan originally requested that the leave he used in the 1975 leave year be charged to his restored leave balance and it is noted that he stated in a letter to Tinker AFB, dated November 29, 1976, that the restored leave was not used because he went on sick leave in October 1975. The file does contain copies of letters, dated January 28, 1976, and subsequent from Mr. Quinlan evidencing his efforts after the period for the use

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of the restored leave had expired at the end of the 1975 leave year to have his leave record changed.

The law governing the use of and payment for annual leave forfeited and subsequently restored is contained in section 6304(d)(2) of title 5, United States Code, which provides as follows:

"Annual leave restored under paragraph (1) of this subsection, or under clause (2) of section 5562(a) of this title, which is in excess of the maximum leave accumulation permitted by law shall be credited to a separate leave account for the employee and shall be available for use by the employee within the time limits prescribed by regulations of the Civil Service Commission. Leave credited under this paragraph but unused and still available to the employee under the regulations prescribed by the Commission shall be included in the lump-sum payment under section 5551 or 5552(1) of this title but may not be retained to the credit of the employee under section 5552(2) of this title." (Emphasis added.)

The implementing regulation of the Civil Service Commission is contained in section 630.306 of title 5, Code of Federal Regulations, and was also published in the attachment to Federal Personnel Manual Letter No. 630-22, dated January 11, 1974, together with explanatory material. This regulation provides in pertinent part as follows:

"Annual leave restored under section 6304(d) of title 5, United States Code, must be scheduled and used not later than the end of the leave year ending two years after

* * * * *

"(b) The date fixed by the agency head, or his designated official, as the termination date of the exigency of the public business which resulted in forfeiture of the annual leave * * *."

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In explanation of this regulation the Commission, at pages 10 and 12 of the attachment to FPM letter No. 630-22 states: "It should be especially noted that there is no legal authority provided to permit the retention of the restored leave or to provide payment therefore if it is not used within the specified time limit of 2 years." "Any restored leave unused at the expiration of the two-year limit is again forfeited with no further right to restoration." "No payment is authorized for unused restored leave after the expiration of the two year time limit."

Considerable weight must be afforded to the Commission's interpretation of its regulation which, having been issued pursuant to a statutory mandate, has the force and effect of law. In the absence of some inconsistency with the parent statute, this Office has no authority to waive or modify the application of such a regulation even where there may be some indication of extenuating circumstances. Therefore, while it is a question of fact to be determined by the employing agency as to whether restored leave has or has not been used within the prescribed time limit, as a matter of law any restored leave unused at the expiration of the prescribed time limit is again forfeited with no further right to restoration or to be paid for it.

Accordingly, Mr. Quinlan was not entitled to a lump-sum payment at the time of his separation on January 4, 1977, for any forfeited and restored 1973 leave which had been forfeited again at the end of the 1975 leave year, and the voucher may not be certified for payment.


Deputy Comptroller General
of the United States