

**DECISION**



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

*Mr. Vague  
CP*

04644

**FILE:** B-187777

**DATE:** January 3, 1978

**MATTER OF:** Clifford Lomax - Recredit of Forfeited Leave

**DIGEST:** Employee applied for disability retirement in December 1974, and agency placed him on leave without pay effective January 1, 1975, to preserve his entitlement to increased annuity. Excess annual leave which was forfeited at end of leave year under 5 U.S.C. § 6304(a) may not be restored under 5 U.S.C. § 6304(d)(1) under these circumstances. B-184762, July 27, 1976, clarified.

This action is in response to the claim filed by Mr. Clifford Lomax, a former employee of the Library of Congress, for payment for 56 hours of annual leave which were forfeited at the end of leave year 1974.

The record indicates that Mr. Lomax was placed on sick leave on March 1, 1974, and that he remained on either sick leave or annual leave until the next-to-last hour of his workday on December 31, 1974. Mr. Lomax was then placed on leave without pay (LWOP) until his disability retirement application, which was submitted in December 1974, was approved on March 5, 1975. As a result of this action Mr. Lomax forfeited 56 hours of annual leave in excess of maximum permissible carryover between leave years, and Mr. Lomax seeks to have this forfeited leave restored to his account and paid lump-sum to him under the provisions of 5 U.S.C. § 6304(d)(1) (Supp. V, 1975).

It appears that the Library of Congress was correct in placing Mr. Lomax on LWOP on December 31, 1974, so as to preserve his entitlement to the cost of living increases on his annuity. See Civil Service Commission (CSC) Bulletin No. 831-58, III, December 11, 1974. Under these circumstances, Mr. Lomax's annuity should have commenced on January 1, 1975. See CSC Bulletin No. 831-58, supra; James Andrews, B-184762, July 26, 1976; and Jack D. Ellison, B-180436, February 13, 1975.

Since Mr. Lomax remained on the rolls of the Library of Congress until March 5, 1975, any excess annual leave

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to his credit at the beginning of the first full biweekly pay period of 1975 was forfeited under 5 U.S.C. § 6304(a) (Supp. V, 1975). Arguably, it is inevitable that Mr. Lomax should forfeit annual leave merely because his disability retirement application which was submitted in 1974 was not approved until early 1975. However, Mr. Lomax does not appear free from fault in this matter. As noted in the administrative report, Mr. Lomax was not prevented from substituting annual leave for sick leave so as to avoid a forfeiture of annual leave at the end of leave year 1974.

Mr. Lomax states that he asked that annual leave be scheduled in advance, but there is nothing in the record to verify that he requested annual leave or that annual leave was indeed scheduled in advance. Under Library of Congress regulations, LCR 2015-4E, supervisors are responsible for scheduling annual leave for their employees so as to avoid forfeiture, but, as stated in the administrative report, Mr. Lomax's intention to exhaust his sick leave account prevented the Library of Congress from scheduling annual leave until December 1974.

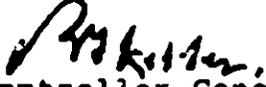
Under the provisions of 5 U.S.C. § 6304(d)(1) (Supp. V, 1975), annual leave which is lost by operation of section 6304 may be restored to the employee if lost due to administrative error or to the exigencies of public business or the sickness of the employee when the annual leave was scheduled in advance. In the present case, there is no indication that the Library of Congress considers the forfeiture of leave by Mr. Lomax to be caused by administrative error. See Samuel Bernstein, B-187055, March 4, 1977. Furthermore, the leave cannot be restored under 5 U.S.C. § 6304(d)(1)(C) relating to the sickness of the employee since the leave was not scheduled in advance. See 5 C.F.R. § 630.308 (1977).

Accordingly, Mr. Lomax's claim for payment for the 56 hours of forfeited leave may not be allowed.

In our consideration of this case, we noted that in a prior decision involving similar facts, James Andrews, B-184762, July 17, 1976, we had stated that the excess annual leave could not be restored under 5 U.S.C. § 6304(d) (Supp. V, 1975), since the forfeiture occurred because of the limitation on lump-sum leave payments contained in 5 U.S.C. § 5551(a) (1970). This statement was in error

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since section 5551(a) was amended in 1973 so as to remove any limitation on lump-sum payments. See 53 Comp. Gen. 820 (1974). We intended to say in Andrews that the employee forfeited the annual leave under the provisions of 5 U.S.C. § 6304(a) (Supp. V, 1975), and that such forfeited leave would not be subject to restoration under 5 U.S.C. § 6304(d)(1)(C) since use of the leave was not scheduled in advance. B-184762, July 27, 1976, clarified.

  
Deputy Comptroller General  
of the United States