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in order to use as much of his use-or-lose leave. However, he was only able to schedule and use 64 hours during the remainder of the leave year and lost 120 hours.

It is the employee's contention that but for the administrative error in the computation of his projected annuity, he would not have lost this leave. Further, that since the error was not administratively discovered and corrected until a date after the first date such leave could be taken to avoid forfeiture, he should have such forfeited leave restored to his account.

The controlling law, 5 U. S. C. 6304(d)(1), which was added to title 5, United States Code, by subsection 3(2) of Public Law 93-181, approved December 14, 1973, 87 Stat. 705, provides in part:

"(d)(1) Annual leave which is lost by operation of this section because of --

"(A) administrative error when the error causes a loss of annual leave otherwise accruable after June 30, 1960;

* * * * *

shall be restored to the employee."

The Civil Service Commission has pursuant to 5 U. S. C. 6311 (1970) issued regulations implementing the provisions of 5 U. S. C. 6304(d)(1), *supra*. These regulations are contained in the attachment to Federal Personnel Manual (FPM) letter No. 630-22, dated January 11, 1974, and are codified in subpart c, part 630 of title 5, Code of Federal Regulations.

That which is considered as constituting error under the before-cited provisions is a matter for which primary jurisdiction has been determined to lie with the agency involved. See 55 Comp. Gen. 784 (1976). In that decision at page 785 we pointed out that decisions of our Office have construed as administrative error such matters as the failure of an agency to carry out written regulations which have mandatory effect for the purpose of correcting erroneous pay rates. Also, when counseling of an employee is required by administrative

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regulation, such as in cases involving retirement, the failure to give correct advice on such matters as the employee's service credit constitutes an administrative error. See B-174199, December 14, 1971.

Appendix A of Navy Department Civilian Manpower Management Instructions (CMMI) 831.51, implementing the provisions of the FPM, provides in section A-1:

"a. As a minimum, every employee who is approaching retirement should have access, on an individual basis, to full information concerning retirement benefits and to consultation on individual questions concerning retirement.

* * * * *

"e. Annuities should be computed with maximum accuracy possible, but it should be made clear to the employee that the Civil Service Commission is the authority on this. It is better to under-estimate than to over-estimate."

Leave matters, while incident to retirement, are not an inherent part of an inquiry regarding retirement, service credits for computation purposes, or the amount of an annuity, nor are they by regulation made so.

According to the information in the file, the counseling which the employee requested and received specifically related to the computation of his retired annuity if he should retire at the end of the year. By the employee's own statements in the file, he neither requested nor received any counseling regarding possible forfeiture of leave. The file indicates he already knew that he was in a take it or lose it leave status if he remained in his position and did not retire at the end of the year.

It is clearly evident that the calculation error did not in any way involve consideration of leave. It related only to a computational error in his projected, but unofficial retirement annuity. According to the file, service credits and rates of pay were properly used in that computation. While there was an error in that computation, such

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error was one of division and related only to the annuity being unofficially estimated. In this connection, it is noted that such error was corrected in a timely manner, thus, avoiding the employee electing to retire and being unpleasantly surprised by receiving an annuity considerably less than anticipated.

Accordingly, since there was no error made in the employee's leave account, there is no legal basis upon which his forfeited annual leave may be restored.

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