

PLM-11

**DECISION**



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

9727

FILE: B-192510

DATE: April 6, 1979

MATTER OF:

*[Request For]* Edward McCarthy - *[Annual]* Restoration of Leave and Extended Administrative Leave

DIGEST:

1. Annual leave forfeited as result of sickness but not timely scheduled in writing as required by 5 C.F.R. § 630.308 may not be restored under 5 U.S.C. § 6304(d)(1)(C). Leave not timely approved in writing is not considered to be scheduled in advance as required by subsection 6304(d)(1)(C) and therefore annual leave may not be restored under that subsection.

2. Employee who is not eligible for restoration of leave lost due to illness because leave was not scheduled in advance as required by 5 U.S.C. § 6304(d)(1)(C) may not have leave restored on the basis that there was administrative error under subsection (A) where supervisor did not counsel him as to scheduling requirement. Generally, failure of agency to advise employee of scheduling requirement of subsection (C) does not constitute administrative error under subsection (A) as employees are charged with constructive knowledge of statutory and implementing regulatory requirements pertaining to them. Also, supervisor not requiring leave requests to be in writing is not administrative error as for restoration of leave under subsection 6304(d)(1) burden is on employee to submit written request for annual leave.

*Claim*

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3. Employee injured at work is not entitled to administrative leave for extended absences resulting from such inquiry. In absence of specific statutory authority and if leave was not charged, employee's leave balances should be appropriately adjusted.

On July 21, 1978, Ms. Sharyn Danch, Assistant Counsel for the National Treasury Employees Union (NTEU), as representative of Mr. Edward McCarthy, an employee of the

✓CNG 00058

*64893* (PW)

*JAGC 01501*

Internal Revenue Service, (IRS), in the Chicago District Office, has requested a determination as to whether he is entitled to the restoration of 9 hours of annual leave which were forfeited under 5 U.S.C. § 6304 (1976).

*due to injury*

*+ extended admin leave*

On November 28, 1977, Mr. McCarthy was injured at work and was unable to work for medical reasons through January 14, 1978. Thus, he did not use the 9 hours of annual leave which were in excess of his maximum permissible carryover under 5 U.S.C. § 6304(a). If that leave had been scheduled in writing prior to November 20, 1977, the beginning of the 3rd biweekly pay period prior to the end of the leave year, it could have been carried over by the employee under 5 U.S.C. § 6304(d)(1) which provides:

"(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;

"(B) exigencies of the public business when the annual leave was scheduled in advance; or

"(C) sickness of the employee when the annual leave was scheduled in advance;

shall be restored to the employee."

However, it was not until December 22, 1977, that Mr. McCarthy, in a memorandum to his immediate supervisor, formally requested that the 9 hours of annual leave which he was unable to use due to his injury be retained for his use in the following leave year. Apparently his use of this leave had been orally approved by his superior at an earlier date. On January 6, 1978, he again requested the agency's restoration of the forfeited annual leave.

For restoration of forfeited annual leave under subsections (B) and (C), the statutory requirement that the annual leave be scheduled in advance must be met. See Matter of William D. Norsworthy, 57 Comp. Gen. 325 (1978).

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The Civil Service Commission (Commission) has pursuant to 5 U.S.C. § 6304(d)(2) and 6311, issued regulations implementing the provisions of 5 U.S.C. § 6304(d)(1). With regard to the requirement that leave restored under subsections (B) or (C) be scheduled in advance, 5 C.F.R. § 630.308 provides that before annual leave forfeited under section 6304 may be considered for restoration under that section, use of annual leave must have been scheduled in writing before the start of the third biweekly pay period prior to the end of the leave year.

With regard to this advance scheduling requirement paragraph 5(3)(c) of the attachment to Federal Personnel Manual Letter 630-22 provides in pertinent part as follows: ?

" \* \* \* The scheduling and, as necessary, rescheduling of annual leave must be in writing. (In this regard, Standard Form 71, Application for Leave, may be used to document the actions, supplemented as required.) Documentation must include the following:

" - The calendar date the leave was scheduled, i.e., approved by the official having authority to approve leave\* \* \*." (Emphasis added.)

The NTEU contends that Mr. McCarthy's scheduling of annual leave orally, in accordance with the prevailing practice in his office unit should be considered sufficient to meet the scheduling requirement of subsection (C).

In view of the express requirement in 5 C.F.R. § 630.308 requiring the scheduling of leave in writing we cannot consider Mr. McCarthy's request for annual leave which was never approved in writing by his supervisor as scheduled in advance within the meaning of subsection (C) and annual leave could not be restored under that subsection.

The NTEU believes that the failure of Mr. McCarthy's supervisor to counsel him concerning the importance of the scheduling of leave in writing was an administrative error under subsection (A). Furthermore, the NTEU believes that the supervisor's failure to require his leave request to be in writing was a failure to carry out mandatory administrative regulations and thus was an administrative error under subsection (A). In support of this view the NTEU has cited

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IRS Midwest Region Memorandum 06-1 (Rev 2) dated August 12, 1975, which states in pertinent part that Public Law 93-181 "in no way relieves supervisors of their responsibility to insure that leave is properly scheduled early in the leave year to avoid forfeiture."

We have held that the failure of an agency to advise an employee of the scheduling requirement of subsections (B) and (C) does not constitute an administrative error under subsection (A) as employees are charged with constructive knowledge of statutory requirements pertaining to them and of the implementing regulations issued pursuant to the statute. Matter of Michael Dana, 56 Comp. Gen. 470 (1977). The exception to the general rule is where the agency has implemented a written regulation which requires that employees be counseled concerning a possible forfeiture of annual leave. See Matter of John J. Lynch, 55 Comp. Gen. 784 (1976). We do not consider that the general statement regarding supervisory responsibility as contained in the memorandum of August 12, 1975, cited by the NTEU, fulfills the requirements set out in that decision. Accordingly, the agency's not counseling Mr. McCarthy concerning the requirement for the restoration of forfeited leave is not an administrative error under subsection (A).

Material in the file indicates that Mr. McCarthy was placed on administrative leave for medical purposes for the period November 28, 1977, through January 14, 1978. We are aware of no general statutory authority under which Federal employees may be excused from their official duties without a loss of pay or a charge to sick or annual leave or of specific statutory authority which would enable the IRS to grant Mr. McCarthy administrative leave for medical reasons. Over the years it has been recognized that in the absence of specific statutory authority, the head of an agency may, in certain situations, excuse an employee for brief periods of time without a charge to leave or loss of pay. Some of the more common situations in which agencies generally excuse absence without a charge to leave are discussed in FPM Supplement 990-2, Book 630, subchapter S11-5. These include blood donations, tardiness and brief absence, taking examinations, attending conferences or conventions, and representing employee organizations.

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We have held that, in view of the situations in which administrative leave may be granted, there is no general authority for an agency to grant administrative leave for an extended period of time. See 53 Comp. Gen. 1054 (1974). 3

If Mr. McCarthy was in fact carried in an administrative leave status i.e., not charged annual or sick leave nor on leave without pay incident to receipt of employee compensation benefits, the agency should take action to charge sick and/or annual leave for the period in question. *sh. be granted by agency*

*R. K. Miller*  
Deputy Comptroller General  
of the United States