

PLM-22

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DECISION



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

FILE: B-194106

DATE: March 26, 1980

REQUEST for

MATTER OF: Willie W. Louie - Restoration of Annual Leave]

DIGEST: Since 5 U.S.C. 5551(a) authorizing lump-sum leave payment contemplates an actual separation from Government service and does not apply to a transfer such as resignation from an agency and reemployment in another agency the following day, lump-sum payment to employee separated by USIA and appointed by Air Force the next day was erroneous, and refund requirement of 5 U.S.C. 6306(a) is not applicable. In accordance with 5 C.F.R. 630.501(a) leave should have been recredited at time of reemployment and leave forfeited as result of failure to recredit leave account until lump-sum had been repaid may be restored under 5 U.S.C. 6304(d)(1)(A).

By letter dated October 22, 1979, Lieutenant Colonel B.L. Proul, Accounting and Finance Officer, Bolling Air Force Base, Department of the Air Force, *DLS 64235* has appealed the determination by our Claims Division on August 7, 1979, that hours of annual leave subject to forfeiture should be restored to Mr. Willie W. Louie, a civilian employee of the Air Force. The Claims Division found that the annual leave was forfeited as a result of administrative error and was for restoration pursuant to 5 U.S.C. 6304(d)(1)(A). Upon review, the action of the Claims Division is sustained.

The record shows that Mr. Louie resigned from his position with the United States Information Agency (USIA) effective June 30, 1974, *ACC 00058* and that he was appointed to a position the following day, July 1, 1974, with the Department of the Air Force at Andrews Air Force Base. *ACC 00241* Incident to his resignation, the USIA paid him a lump-sum in the gross amount of \$5,136.72 for 392 hours of accrued annual leave and for 16 additional hours for two holidays which occurred during the projected leave period.

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In 1975 the Air Force and the USIA advised Mr. Louie that the lump-sum leave payment he had received from the USIA was erroneous as he was reemployed by the Air Force without a break in service and that he would be required to refund the full amount of the payment.

On July 8, 1975, Mr. Louie filed a request with the USIA for waiver of his indebtedness for the erroneous payment of lump-sum leave accrual. Upon the denial of his request for waiver by the Claims Division on April 20, 1977, the USIA advised him that he should refund the amount of the lump-sum leave payment to the Department of the Air Force. On May 3, 1977, he agreed to refund the erroneous payment through setoff in the amount of \$100 from his biweekly salary payments starting with the pay period beginning May 8, 1977.

The Air Force determined that it would not recredit the leave covered by the refund until full repayment had been made. When Mr. Louie's leave account was reconstructed as of the time final payment would be made, the Air Force found that recrediting his leave as of the date of reemployment would result in the forfeiture of 242 hours of annual leave in excess of his maximum permissible carryover under 5 U.S.C. 6304(c). It is this 242 hours of annual leave that our Claims Division determined should be restored based on its finding that the Air Force's failure to recredit Mr. Louie's leave pending repayment of his indebtedness was an administrative error within the meaning of 5 U.S.C. 6304(d)(1)(A).

In requesting reconsideration of the Claims Division determination, the finance officer explains that the Air Force determination to recredit the leave in question was made in accordance with para. 2-4 of Book 550, Federal Personnel Manual Supplement 990-2, which provides in pertinent part as follows:

"a. General.* * * when a lump-sum payment has been made, and the employee reenters

the Federal service in a position subject to a formal leave system, he is required to refund for the entire unexpired portion of the period covered by the lump-sum payment, since all such unexpired leave is subject to recredit * * *. It is within the discretion of the administrative office to refuse to grant leave represented by the required refund until the refund has been made in full (see 34 Comp. Gen. 17)."

In our decision 34 Comp. Gen. 17 (1954) we considered the manner of recrediting of annual leave where an employee who received a lump-sum leave payment upon his separation from Government service was reemployed by the Government prior to the expiration of the period covered by the lump-sum leave payment. We held that the act of December 21, 1944, 58 Stat 845, now codified at sections 5551(a) and 6306(a) of title 5, United States Code, contemplates an immediate refund of that part of the lump-sum leave payment which is to be refunded and that such requirement should be a condition precedent to reemployment. Accordingly, we held therein that in instances where installment payments are permitted an agency's refusal to recredit leave until the final refund payment is proper even though reconstruction of the employee's leave account at the time of final payment and as of the date of reemployment results in a forfeiture of the leave covered by the refund. See also 38 Comp. Gen. 91 (1958).

The above rule pertaining to the refund requirement of 5 U.S.C. 6306(a) is not for application in this case where the employee was reemployed by a Government agency the day following his separation.

Subsection 6306(a) of title 5 of the United States Code provides in pertinent part as follows:

"(a) When an individual who received a lump-sum payment for leave under section 5551 of this title is reemployed before the end of the period covered by the lump-sum payment in or under the Government of the United States *** he shall refund to the employing agency an amount equal to the pay covering the period between the date of reemployment and the expiration of the lump-sum period."

The law authorizing a lump-sum payment for leave upon separation from Government service, 5 U.S.C. 5551, contemplates an actual separation from Government service of one or more workdays and does not apply to a transfer from one agency to another under the same leave system such as a resignation or discharge from one agency and reemployment in another agency the following day. See 24 Comp. Gen. 532 (1945) and 26 Comp. Gen. 578 (1947). As Mr. Louie was employed by the Air Force on the day following his separation from the USIA, he did not receive a valid lump-sum leave payment under 5 U.S.C. 5551, and accordingly, 5 U.S.C. 6306(a) which controls the refund of payments made pursuant to section 5551 is not applicable. Thus, there was no basis to withhold the recrediting of Mr. Louie's annual leave until he completed his refund of the erroneous lump-sum leave payment. Notwithstanding Mr. Louie's debt for the erroneous payment, his accrued annual leave should have been credited to his leave account at the Department of the Air Force at the time of his transfer in accordance with 5 C.F.R. 630.501(a).

Annual leave forfeited at the end of the leave year can be restored under the circumstances set forth in 5 U.S.C. 6304(d)(1) which provides in pertinent part as follows:

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

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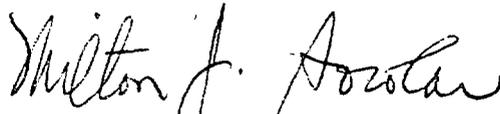
"(A) administrative error when the error causes a loss of annual leave otherwise accruable after June 30, 1960;

* * * * *

shall be restored to the employee."

Mr. Louie's forfeiture of annual leave was the result of the erroneous lump-sum leave payment made by the USIA and the Air Force's subsequent failure to recredit his leave at the time of his appointment. The annual leave subject to forfeiture based on the Air Force's reconstruction of Mr. Louie's leave account from July 1, 1974, is to be regarded as forfeited as the result of administrative error and may be restored to his leave account pursuant to 5 U.S.C. 6304(d)(1)(A).

In accordance with the above, the action of the Claims Division is sustained.



For the Comptroller General
of the United States