

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

FILE: B-208293

DATE: January 26, 1983

MATTER OF: Bessie P. Williams -- Waiver of Erroneous
Credit of Annual Leave**DIGEST:**

Employee whose annual leave account was overcredited, then adjusted to reflect the series of administrative errors which accounted for the overpayment, requests waiver of the correction under 5 U.S.C. § 5584 (1976). Waiver of a claim to annual leave is appropriate when an employee has taken leave in excess of that to which he is entitled, resulting in a negative balance in the employee's annual leave account. Lamoyne J. DeLille, 56 Comp. Gen. 824 (1977). Waiver is denied since there is a positive balance remaining in the employee's annual leave account after correction, and the agency is not estopped from correcting its mistake.

This decision is in response to a request from Billy H. Spillers, Chief, Division of Personnel Management, Department of the Interior, Bureau of Reclamation, for consideration of the claim of an employee, Mrs. Bessie P. Williams, to 190 hours of annual leave, erroneously credited to her account by the Bureau and subsequently removed from the account after discovery of the mistake. This case amounts to a request for waiver of the Government's claim against an employee arising out of the erroneous overpayment of pay or allowances. 5 U.S.C. § 5584 (1976). Since a claim may be waived only when correction would result in a negative leave balance, we hold that waiver is inappropriate in this case. The leave balance was properly recouped.

When Mrs. Williams entered on duty with the Bureau of Reclamation in 1974, a personnel specialist incorrectly computed her service computation date (SCD). Although Mrs. Williams questioned the computation, she was assured the date was correct. The error resulted in the erroneous accrual of 8 hours of annual leave per pay period (rather than 6) until 1979, when the mistake was discovered. In 1979, the payroll office informed Mrs. Williams that she had

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been overpaid 238 hours of annual leave; however, the office did not at that time deduct the overpaid leave from Mrs. Williams' annual leave record. In 1981, the Division of Personnel Management discovered another miscalculation of Mrs. Williams' SCD, and her annual leave overcredit was found to be 190 hours. The payroll office deducted those excess hours from Mrs. Williams' annual leave account on April 3, 1982.

Mrs. Williams' "use or lose" annual leave has been reduced from 208 to 18 hours. She states that she had planned on using the leave in lieu of disability retirement for a chronic health problem diagnosed in 1979 and had intended on retiring in 1983 with a 240-hour annual leave balance. Mrs. Williams maintains that she relied in good faith on the incorrect calculations, that she had been saving leave to pay back to her retirement fund, and that, had the extra leave not been credited to her, she would have planned her leave use differently. Mrs. Williams requests that a waiver of the Government's claim to her overcredited leave be granted, and that the 190 hours of annual leave be restored to her record.

This situation is governed by Section 5584(a) of Title 5, United States Code (1976), which provides that:

"A claim of the United States against a person arising out of an erroneous payment of pay or allowances * * * to an employee of an agency, the collection of which would be against equity and good conscience and not in the best interests of the United States, may be waived in whole or in part by -
(1) the Comptroller General of the United States * * *."

That provision is implemented by regulations in 4 C.F.R Part 91 (1982), which establish definitions and standards for waiver.

The Comptroller General may waive a "claim of the United States against a person arising out of an erroneous payment of pay and allowances." 5 U.S.C. § 5584(a) (1976). "Pay", as it is defined in the regulations, includes "payment for accumulated and accrued leave," 4 C.F.R. § 91.2(c) (1982). Therefore, overcredited annual leave is covered by the waiver provisions. Lamoyne J.DeLille, 56 Comp. Gen. 824 (1977).

However, in cases involving the erroneous crediting of annual leave, we have interpreted "erroneous payment" to mean an overpayment which, when corrected, would result in a negative balance in the employee's annual leave account. B-176020, August 4, 1972; B-171092, December 1, 1970. See also Cecil M. Halcomb, 58 Comp Gen. 744 (1979). In the case of a positive leave balance, the error may be easily corrected through reduction of the employee's account, and there is no overpayment which may be considered for waiver under the waiver statute. 56 Comp. Gen. 824, above, at 828. In this case, there was a sufficient balance of annual leave in Mrs. Williams' account to cover the adjustment which was necessary because of the numerous administrative errors. The correction has resulted in a positive leave balance of 18 hours. We have also denied waiver in similar cases where employees claimed that, had the balance been properly computed, they would have used their leave differently in an effort to maintain the maximum allowable carryover balance of 240 hours. See B-171092, cited above.

Mrs. Williams also says that she should not be made accountable for the many errors made by her personnel office in view of the fact that she questioned their figures in the first place. Thus, she alleges that the Government should be estopped from reducing her leave account.

The doctrine of equitable estoppel is unavailable as a basis of relief. Equitable estoppel is generally inapplicable in the case of overpayments to Government employees, since "the relationship between the Federal Government and its employees is not a simple contractual relationship * * * [and since] the ordinary principles of contract law do not apply." William J. Elder and Stephen M. Owen, 56 Comp. Gen. 85, 88 (1976). We have concluded that equitable estoppel does not bar recovery by the Government from its employees in cases where statutes and regulations control the entitlements, regardless of the erroneous actions of its agents. William J. Schuhl, B-206447, July 27, 1982. Therefore, even if Mrs. Williams had justifiably relied to her detriment on the erroneous computation of her annual leave, the Department would not be estopped from correcting its mistake in this case.

Accordingly, the request for restoration of 190 hours of annual leave, mistakenly credited in the past, is denied.

for *Shelton J. Rowland*
Comptroller General
of the United States