

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

26992

**FILE:** B-211881**DATE:** December 9, 1983**MATTER OF:** Thomas C. James

**DIGEST:** An employee who was credited excess annual leave because of administrative error must restore that leave to the extent that repayment does not result in a negative leave balance at the end of any leave year. If the employee used erroneously credited leave, repayment of the resulting overpayment of pay may be waived if it appears he did not know, or have reason to know, of the error. If records sufficient to establish the employee's leave record are not available for any period of time it may not be assumed that he used excess leave for purposes of establishing a debt and considering waiver.

This action responds to the request of the Director of Personnel, Department of the Treasury, for an advance decision concerning whether the overpayment of an employee through erroneously credited annual leave may be waived or, alternatively, what is the proper means for recoupment of erroneously credited leave in this instance. Unless reduction of his known leave balance at the end of any leave year by the number of hours of overcredited leave would result in a negative balance the employee is not indebted and waiver may not be considered. The excess leave should be deducted from his leave account. Excess leave credited to the employee's account as a result of administrative error during years for which his leave record is no longer available should not be the basis for establishing a debt and the consideration of waiver since it cannot be determined whether he used any excess leave hours.

In January 1969 when Thomas C. James entered on duty, his service computation date was improperly designated because of an erroneous crediting of certain military service. As a result, he was placed in leave-earning category 3 (8 hours annual leave accrual per pay period) in September 1974, which was 1 year, 11 months, and 15 days, or 48 pay periods, in advance of the date he

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was entitled to enter that leave category. Thus, his annual leave account has been overcredited by a total of 96 hours. Mr. James has requested a waiver of the claim for his overpayment.

The Director of Personnel states that he cannot now determine whether Mr. James actually used the excess leave because neither the employing agency (the Internal Revenue Service) nor the employee has maintained leave records dating back to 1974-76, the years in which the excess leave was credited to his account. He asks whether, under these circumstances, the agency should (1) assume that Mr. James used the excess leave and waive the overpayment in the total amount of \$443.76, or (2) assume that he did not use the excess leave, deduct the excess hours from his 1982 positive leave balance (since the error was discovered in 1982) and waive his indebtedness for hours in excess of that balance.

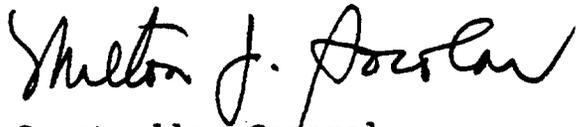
We have held that when an employee has had leave erroneously credited to his account, the leave account should be reconstructed for each year involved to arrive at a proper current balance, and to determine whether an erroneous payment of pay has resulted. The proper leave credit should be added to the correct balance at the beginning of each leave year and the total leave used that year subtracted. If the employee has sufficient leave to cover leave taken even after the adjustment and the reconstructed account results in a positive balance at the end of the year, the error is corrected by the reduction of the employee's positive leave balance. In such instance, there is no overpayment which may be considered for waiver under the waiver authority of the Comptroller General. (5 U.S.C. § 5584.) B-171092, December 1, 1970; B-175216, May 1, 1972; B-166848, June 3, 1969. See also, Matter of DeLille, 56 Comp. Gen. 824, 828 (1977).

If the reconstruction of the employee's leave record shows that he used leave in excess of that to which he was entitled, it is evident that there has been an overpayment on the days he used the excess leave. The salary paid him for those days become a debt to the Government. Procedures for rectifying the use of erroneously credited leave are set forth in 5 U.S.C. § 6302(f), which provides as follows:

"An employee who uses excess annual leave credited because of administrative error may elect to refund the amount received for the days of excess leave by lump-sum or installment payments or to have the excess leave carried forward as a charge against later-accruing annual leave, unless repayment is waived under section 5584 of this title."

We have approved the use of the waiver authority when it is determined that an employee has used erroneously credited leave. B-175216, May 1, 1972; B-166848, June 3, 1969.

In this case, if Mr. James' leave records are no longer available for the years he was credited with excess leave, reconstruction of an accurate record covering that period is not possible. Thus, it cannot be shown that Mr. James used leave in excess of the amount properly to his credit at any time during those years and there is no basis for changing annual leave granted to leave without pay, thus placing him in debt for the pay received on those days. Also, there is no basis to consider waiver action since Mr. James would not be in debt to the Government. Available records should be used to reconstruct his leave from the beginning of the first year available until the end of 1982, the year in which the error was discovered. If during that period he used leave in excess of that to which he was entitled as of the end of a leave year, a debt for the excess leave should be established. The debt so established may be considered for waiver under 5 U.S.C. § 5584. However, if reconstruction of available records shows that none of the overcredited leave was used during those years, then the excess leave credited to his account should be deducted from the balance at the end of each year.

for   
Comptroller General  
of the United States