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**DECISION**



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

**FILE:** B-213380

**DATE:** August 20, 1984

**MATTER OF:** William Corcoran -- Forfeiture of Restored  
Annual Leave

**DIGEST:**

An employee has no rights to further restoration and lump-sum payment of unused forfeited and restored 1977 leave, which was forfeited again at the end of the 1980 leave year. Although agency personnel gave him erroneous advice concerning his restored leave and failed to fix the date, as required by the regulations, for the running of the 2 years in which to use-or-lose his restored leave, no legal authority exists for further restoration of leave once forfeited a second time.

Mr. William Corcoran, a retired employee of the Department of Energy (DOE), has appealed Claims Settlement No. Z-2837607, dated April 23, 1982, issued by our Claims Group, which denied his request for lump-sum payment of 184 hours of restored leave.

The issue on appeal is whether the 2-year time limit in which the employee must use-or-lose his restored leave may be waived when agency personnel repeatedly gave him erroneous advice and failed to specify the time limits for use of the restored leave. We hold that no legal authority exists to permit retention or payment of restored leave after the 2-year period runs since employees are charged with constructive knowledge of statutory provisions and of their implementing regulations. Failure of an agency to counsel their employees properly regarding their rights to restored leave is not administrative error, absent a specific agency regulation requiring such counseling.

BACKGROUND

The facts, drawn from the record, are as follows. In November 1977, Mr. Corcoran scheduled 200 hours of annual leave from November 17, 1977 to December 30, 1977. When it appeared that "major programmatic requirements" required Mr. Corcoran's continued presence at the agency,

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the Assistant Director for the Heating and Cooling Division canceled all scheduled leave of his Bureau Chiefs. Consequently, Mr. Corcoran used only 16 hours of his 200 hours of annual leave during the entire period.

On March 20, 1978, the Assistant Director requested restoration of Mr. Corcoran's forfeited annual leave on the grounds that the exigency of public business, which prevented Mr. Corcoran from taking his scheduled leave, had lasted from "mid-November and continued well into the new year." Upon learning that his memorandum never reached the appropriate DOE Payroll and Accounting unit for approval, the Assistant Director resubmitted his request on July 10, 1978. The DOE Division of Personnel approved the restoration of 184 hours of annual leave to Mr. Corcoran on August 8, 1978.

According to Mr. Corcoran, he called the DOE Payroll Office in September 1978, to inquire into the status of his restored leave. He was advised by an employee of that office that he would receive a copy of the determination that his 184 forfeited hours had been approved for restoration. The notice, which was dated September 14, 1978, warned: "The restored leave should be scheduled for prompt use as early as possible in advance of the two-year limiting period. Any restored leave which is unused at the expiration of the two-year limit is forfeited with no further right to restoration." The notice did not set the beginning or ending date for the running of the 2-year period, nor did it fix the date when the public exigency ended which caused Mr. Corcoran to forfeit his annual leave. Furthermore, Mr. Corcoran contends that he never received this notice.

Mr. Corcoran contends that in January 1979, he again inquired into the status of his restored leave because the 184 hours had not shown up on his pay statement. Again, personnel in the DOE Payroll Office assured him that a separate account for restored leave had been established but that no time limit existed for its use. Although Mr. Corcoran continued to make periodic inquiries to the DOE Payroll Office in 1980 and 1981, these and earlier telephone calls are undocumented.

In September 1981, however, another employee in the Payroll Office informed Mr. Corcoran that he risked losing his restored leave by January 1982, if he failed to use it, but that he could elect to take lump-sum payment if he retired before that time. This payroll employee made a notation of this conversation on a copy of the September 14, 1978, notice.

Subsequently, Mr. Corcoran retired in September 1981. When he contacted the DOE Payroll Office again, to obtain lump-sum payment of his unused restored leave, he was advised that the 2-year use-or-lose period had lapsed, as of January 1981, and consequently, he had forfeited all rights either to further restoration or lump-sum payment for the leave.

Mr. Corcoran submitted his claim for restoration of his forfeited leave to our Claims Group, but it denied his claim on the grounds that no legal authority justified "the retention of or payment for restored leave not used within 2 years of the date of restoration." Mr. Corcoran appealed the decision of the Claims Group, arguing that he should not have to bear the financial burden for the repeated erroneous advice DOE Payroll personnel gave him concerning his restored leave. He points to a letter, dated February 16, 1982, from the DOE Director of Personnel Policies and Programs, which acknowledged possible administrative error and also noted the agency's failure to fix the date for the end of the public exigency, as required by 5 C.F.R. § 630.306, so that Mr. Corcoran might have been apprised of the 2-year period. Mr. Corcoran demands that corrective procedures be pursued under the Back Pay Act, 5 U.S.C. § 5596.

#### DISCUSSION

Under 5 U.S.C. § 6304(d)(1) (1982), annual leave which is forfeited because of administrative error, exigencies of public business, or sickness of the employee shall be restored to the employee. For forfeiture due to the exigencies of public business or the sickness of the employee, the leave must have been scheduled in advance. 5 U.S.C. § 6304(d)(1)(B,C). Section 6311 of that title authorized the Civil Service Commission (CSC) (now Office of Personnel Management) to "prescribe regulations necessary for the administration of this subchapter" which were to include crediting restored leave in a separate account and establishing a time limit for its use. See 5 U.S.C. § 6304(d)(2).

The Commission developed implementing regulations, later published in 5 C.F.R. Part 630, subpart C, as well as "CSC Guidelines" published in Federal Personnel Manual Letter No. 630-22, January 11, 1974. Section 630.306 of title 5, Code of Federal Regulations, states in part:

"Annual leave restored under section 6304(d) of title 5, United States Code, must be scheduled and used not later than the end of the leave year ending two years after

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"(b) The date fixed by the agency head, or his designated official, as the termination date of the exigency of the public business which resulted in the forfeiture of the annual leave \* \* \*."

The CSC Guidelines interpret the 2-year limit for the use of restored leave strictly, stating:

"[T]here is no legal authority provided to permit retention of the restored leave or to provide payment therefor if it is not used within the specified time limit of two years. The only exception to this is if the employee separates prior to the time limit, and if so, he receives a lump-sum payment for the unused leave.

"Any restored leave unused at the expiration of the two-year limit is again forfeited with no further right to restoration." FPM Letter No. 630-22, at p. 10 (emphasis added).

Since the promulgated regulation, 5 C.F.R. § 630.306, has the force and effect of law, no remedy is available once the 2-year period expires; restored leave which is forfeited again carries no further rights to retention or payment.

As we held in Patrick J. Quinlan, B-188993, December 12, 1977, even where the employing agency fails to maintain a separate account for restored leave as required by the governing law and regulation, the 2-year time limitation may not be modified nor waived for unused restored leave. Evidence of extenuating circumstances is not enough to overcome this strict rule. Quinlan, cited above, and Edmond Godfrey, B-205709, March 16, 1983. Thus, in light of the plain language of the regulations and the Commission's explanatory FPM Letter No. 630-22, we reasoned in Quinlan that "as a matter of law any

restored leave unused at the expiration of the prescribed time limit is again forfeited with no further right to restoration or to be paid for it."

The only exception to this rule is where the agency erred in charging an employee's regular leave account instead of his restored account, contrary to his specific instructions, and where no separate category appeared on his pay statement to reflect the restored leave hours. In Robert D. McFarren, 56 Comp. Gen. 1014 (1977), we held that the agency should correct its records by charging the restored leave account and restoring hours charged to the regular account even though the 2-year period had expired.

The DOE Director of Personnel Policies and Programs Division admitted in her letter to the Claims Division, dated February 16, 1982, that the agency failed to fix the date for termination of the public exigency so that Mr. Corcoran could have been apprised of the running of the 2-year period, as required by 5 C.F.R. § 630.306. However, the letter from DOE also points out that the end of the exigency was not later than March 20, 1978, the date Mr. Corcoran's supervisor first requested restoration of the forfeited leave, and that Mr. Corcoran had until January 9, 1981, the end of the 1980 leave year, to use the restored leave.

As a general rule, employees are charged with constructive knowledge, although they may possess no actual knowledge, of the statutes and regulations which pertain to them. Michael Dana, 56 Comp. Gen. 473 (1977); and Dr. W. Newlin Hewson, B-193567, May 24, 1979. Here, Mr. Corcoran states that he never received a copy of the notice of restoration of 184 hours of leave, dated September 14, 1978, which mentioned the 2-year limit for the use of restored leave but which failed to set the termination date for the public exigency. However, Mr. Corcoran did learn after calling the DOE Payroll office in September 1978, that he had been credited these hours as restored leave, and he knew or should have known that according to the pertinent regulation, 5 C.F.R. § 630.306, he had until the end of the 1980 leave year in which to use-or-lose his restored hours. It is immaterial that the proper person at DOE failed to fix the exact date on which the exigency actually ended, as long as this event occurred at any point during the 1978 leave year

since Mr. Corcoran had until January 1981, to use these hours, or collect lump-sum payment if he separated from the agency prior to that time.

Although Mr. Corcoran may have received erroneous advice from the DOE Payroll Office concerning the time limits for use of his restored leave, this does not constitute administrative error since "no regulation [requires] the Department of Energy employees to be counseled concerning their leave balances." Letter from DOE Director of Personnel Policies and Programs Division, cited above. We have held that in the absence of an agency regulation requiring counseling of its employees on the forfeiture of annual leave, forfeiture of leave due to misunderstandings arising from informal discussions with agency personnel does not constitute administrative error. Samuel Bernstein, B-187055, March 4, 1977. We believe the same principle applies where no agency regulation requires counseling of employees about the possible forfeiture of restored leave.

Since we have found no administrative error upon which a claim may be founded, there is no basis upon which to hold that the agency's actions constituted an unwarranted or unjustified personnel action under the Back Pay Act, 5 U.S.C. § 5596 (1982).

For the above-stated reasons, we hold that Mr. Corcoran may not have restored the 184 hours of leave or receive lump-sum payment for those hours where he has exceeded the 2-year use-or-lose provision of the relevant regulation.



**Acting** Comptroller General  
of the United States