

DECISION



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

FILE: B-219000

DATE: October 9, 1985

MATTER OF: Lester L. Jefferson

DIGEST:

When a Government employee has leave erroneously credited, the leave account should be reconstructed for each separate year involved to arrive at a proper current leave balance, and to determine whether an erroneous payment of pay has resulted. Waiver may be granted under 5 U.S.C. § 5584 only where the reconstructed leave record for a year shows a use of excess leave. Where an employee is granted a waiver for all years in which an overpayment occurred, that waiver, combined with the appropriate downward adjustment of his leave account, fully extinguishes the employee's indebtedness arising out of the improper crediting of his leave account.

Mr. Lester L. Jefferson requests a review of the action taken by our Claims Group on his application for a waiver of salary overpayments he received resulting from excess annual leave erroneously credited to his leave account between 1977 and 1981. Based on a reconstruction of his leave account, our Claims Group waived collection of the overpayments he received in the leave years 1978, 1979, and 1980. No waiver was granted for the years 1977 and 1981 because no overpayment was involved. We sustain our Claims Group's action, and we also conclude that Mr. Jefferson is not liable for additional amounts now claimed by his employing agency.

Background

Mr. Jefferson has been employed by the Department of Labor since May 1975. At that time he was assigned a service computation date for leave accrual purposes of September 29, 1962. Labor Department officials report that this date was erroneous because of an improper credit of certain prior military service, and that a service computation date

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of April 21, 1967, should instead have been established for him. The error was not detected until 1981.

The laws governing the conditions of employment of Federal civil servants provide that an employee with 15 or more years of creditable service is entitled to the accrual of one 8-hour day of annual leave with pay each biweekly pay period, and that an employee with between 3 and 15 years of service is entitled to the accrual of three-fourths of a day of annual leave each biweekly pay period.^{1/} Thus, an employee with more than 15 years of service accrues 208 hours of annual leave each year, while an employee with between 3 and 15 years' service accrues only 160 hours of annual leave per year.

The error made in fixing Mr. Jefferson's service computation date caused him to be incorrectly credited with annual leave at the rate prescribed for an employee with 15 or more years of service during the years between 1977 and 1981. After the error was detected, the concerned Labor Department officials concluded that he had received salary overpayments totaling \$1,852.33 during those years. In arriving at that conclusion, the officials used a running leave balance for the entire period. That is, instead of closing out his reconstructed leave account at the end of each year, the officials reconstructed a continuous open account for the entire 4-year period and recalculated his leave balance on each occasion he had taken leave during that time. Use of this method of reconstructing the account produced a result showing that he had used 7 hours of excess leave in 1978, 16 hours in 1979, 58 hours in 1980, and 74 hours in 1981. The officials calculated the amount of the \$1,852.33 claim against him on the basis of the salary he had received for those hours.

Mr. Jefferson applied for a waiver of the \$1,852.33 claim after he was presented with the bill of collection. Labor Department officials forwarded the application to our Claims Group with a recommendation that it receive favorable consideration.

^{1/} See 5 U.S.C. § 6303(a).

Based on a reconstruction of Mr. Jefferson's leave account, our Claims Group determined that Mr. Jefferson did not have a negative leave balance for either 1977 or 1981. They determined, however, that he had used 185, 184, and 210 hours of annual leave respectively in 1978, 1979, and 1980, and that he had a negative leave balance at the close of each of those leave years. The Claims Group waived collection of salary received for the hours of excess leave taken in each of those years, in a total amount of \$849.89.

Based on this determination, the Department of Labor subtracted the amount waived (\$849.89) from the amount of its original claim against Mr. Jefferson (\$1,852.33), and advised him that he was still in debt for the balance (\$1,002.44). Its action in doing so appears to have been prompted, in part, by language contained in the Claims Group's letter indicating that waiver of the \$1,002.44 amount was denied.

Mr. Jefferson now questions the correctness of the agency's action initiating collection of the \$1,002.44 amount.

Analysis and Conclusion

This situation is governed by section 5584 of title 5, United States Code, which provides that:

"(a) 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, which establish definitions and standards for waiver.

The Comptroller General thus has authority under statute to waive a "claim of the United States against a

person arising out of an erroneous payment of pay and allowances." "Pay", as it is defined in the regulations, includes "payment for accumulated and accrued leave."^{2/} Therefore, overcredited annual leave is covered by the waiver provisions.

We have held^{3/} that when an employee has had leave erroneously credited to his account, however, the leave account should be reconstructed for each separate year involved to arrive at a proper current balance, and to determine whether an erroneous payment of pay has actually 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 reconstruction of the employee's leave record for a year shows that he used leave in excess of that to which he was entitled, there has been an overpayment on the days he used the excess leave. The salary paid him for those days becomes a debt to the Government which is subject to waiver in an appropriate case. Alternatively, 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.

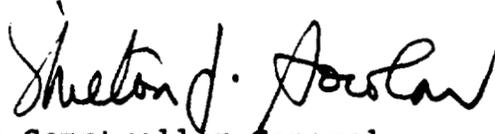
In Mr. Jefferson's case, the agency incorrectly determined that he had been overpaid by \$1,852.33. The Claims Group's determination that he had been overpaid \$849.89 was based on a reconstruction of his leave account in accordance with the procedure set forth above. Its waiver of the Government's claim against Mr. Jefferson for that amount, combined with the necessary downward adjustment in his annual leave account, fully extinguished his indebtedness arising out of the error made in establishing his service computation date. We, therefore, sustain the Claims Group's determination waiving his indebtedness to the United States

^{2/} 4 C.F.R. § 91.2(c).

^{3/} See, e.g., Bessie P. Williams, B-208293, January 26, 1983, reaffirmed, August 15, 1983, and decisions cited therein.

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and hold that the agency action to collect additional amounts is in error.

for 
Comptroller General
of the United States