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DECISION



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

FILE: B-219974

DATE: October 21, 1985

MATTER OF: Forfeiture of Annual Leave because
of Suspension

DIGEST:

1. A terminated Federal employee is entitled to a lump-sum payment for unused annual leave upon separation from service, but must refund the full amount if the separation is subsequently set aside, because there then no longer exists any proper basis for the payment. Hence, recoupment of a lump-sum leave payment is required in the case of an employee who was terminated, but whose termination was subsequently changed to a suspension in arbitration proceedings, since the employee would not have received a separation payment for unused leave if suspension rather than termination had been the original disciplinary action.

2. Federal employees are generally eligible to carry over no more than 240 hours of unused annual leave from one year to the next. An employee who has been suspended from duty without pay, and who cannot use annual leave, is subject to this maximum leave carryover limitation. Thus, an employee who was suspended and was not restored to duty until the next succeeding year forfeited the number of hours of annual leave in excess of 240 hours which were credited to his leave account at the time the suspension began.

This matter concerns a Federal employee who was terminated but whose termination was subsequently changed to an 11-month suspension in arbitration proceedings. The primary issue is whether the employee, upon restoration to duty following the suspension, is liable to forfeit leave under the annual leave carryover limitations prescribed by statute. We conclude that the employee in this case is

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subject to a forfeiture of excess leave, and we overrule a contrary determination made by our Claims Group.^{1/}

Background

The employee involved in this matter is a mechanic, grade WG-10, at an Air Force installation in Missouri. He was terminated on June 22, 1981, for repeated failure to follow the safety rules of his shop. In subsequent grievance proceedings, an arbitrator found that termination was an excessive disciplinary measure in the circumstances, and in place of it the arbitrator substituted a suspension without pay for the period from June 22, 1981, through May 9, 1982.

The employee received a lump-sum payment for 324 hours of unused annual leave at the time of his separation in 1981. When he returned to work in 1982 he was required to refund the lump-sum leave payment. Also, 240 hours of annual leave were restored to his credit. He was required to forfeit 84 hours of leave under the annual leave carryover limitations prescribed by statute.

The employee subsequently filed a claim with our Claims Group requesting either (1) payment for 84 hours' leave, or (2) restoration of an additional 84 hours to his leave account. The Claims Group determined that he was eligible for a recredit of an additional 84 hours to his leave account. Officials of the Air Force Accounting and Finance Center have since questioned the correctness of that determination.

Analysis and Conclusion

The statutes governing the leave entitlements of Federal employees provide that an employee who is separated from Government service is entitled to receive a lump-sum payment for accumulated and current accrued annual leave.^{2/}

^{1/} This decision is issued under the authority of 31 U.S.C. § 3702 and 4 C.F.R. Part 32.

^{2/} See 5 U.S.C. § 5551(a).

If an employee is terminated and the termination is subsequently set aside, however, the lump-sum leave payment received at the time of separation is recoupable in the full amount.^{3/}

In addition, the leave statutes provide that an employee who is stationed in the United States may accumulate and carry into a succeeding leave year a maximum of 30 days, or 240 hours, of annual leave.^{4/} We have held that an employee who cannot use paid annual leave during a period of suspension from duty is subject to this maximum leave carryover limitation, and is liable to forfeit annual leave in excess of the amount allowable at the beginning of the next succeeding leave year.^{5/}

In the present case, the arbitration award had the effect of retroactively converting the employee's termination to a suspension without pay. Thus, his rights are for determination on the basis of that suspension. If the disciplinary action had originally been a suspension without pay in 1981, then the employee would not have received a lump-sum leave payment, and he would have been allowed to carry only 240 hours of his 324 hours of unused leave forward into the 1982 leave year. Hence, we conclude that he was properly required to refund the full amount of the lump-sum leave payment he received in 1981, and that he should have been allowed a recredit of only 240 hours, rather than 324 hours, of annual leave upon his restoration to duty in 1982.^{6/}

^{3/} See, e.g., Vincent T. Oliver, 59 Comp. Gen. 395 (1980).

^{4/} 5 U.S.C. § 6304(a).

^{5/} Restoration of Forfeited Annual Leave, B-209958, March 2, 1983; Forfeiture of Annual Leave because of Suspension, B-197957, July 24, 1980.

^{6/} Restoration of the 84 hours of excess leave as suggested by the Claims Group under the provisions of the Back Pay Act, 5 U.S.C. § 5596, would have been appropriate only if the employee had been retroactively restored to duty with pay.

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Accordingly, we disallow employee's claim in this matter.

for 
Comptroller General
of the United States