

DECISION



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

FILE: B-219505

DATE: November 29, 1985

MATTER OF: Carl H. L. Barksdale

DIGEST:

Where an employee's annual leave account was overcredited due to an error in calculating his service computation date, the employee may be granted waiver only to the extent reconstruction of his leave account results in a negative leave balance. The 123 hours deducted in reconstructing his annual leave account may not be waived or otherwise recredited. When an employee has sufficient leave to his credit to cover the adjustment there is no overpayment of pay which may be considered for waiver.

This action is in response to a request from Carl H.L. Barksdale for waiver of the Government's claim to overcredited annual leave. We find that the Army may not waive collection of the leave.

Mr. Barksdale was retired based on disability from the United States Air Force in 1965. He was employed as a civilian by the Department of the Army in 1966. In 1983, Mr. Barksdale was informed that a personnel specialist reviewing his personnel file had discovered an error in computing his service computation date. Apparently, Mr. Barksdale's years in military service had erroneously been included in the computation.

As a result of the error Mr. Barksdale was placed in an incorrect leave earning category and credited with leave to which he was not entitled. After the error was discovered, he was notified that 123 hours had been deducted from his leave balance and that he had been erroneously paid for 36 additional hours of leave, for which he owed the Government \$646.56.

The Army submitted a request to our Claims Group on Mr. Barksdale's behalf for waiver of the erroneous payment pursuant to 5 U.S.C. § 5584. In its submission the Army also asked whether it could recredit 123 hours to his leave account. By settlement dated December 4, 1984, our Claims Group allowed waiver of the erroneous overpayment of

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B-219505

\$646.56, but failed to address the question of recrediting Mr. Barksdale's leave account. Mr. Barksdale has requested an opinion on this matter.

We have consistently held that when an employee's leave account must be adjusted to correct a previous error and the employee has sufficient leave to his credit to cover the adjustment, there is no overpayment of pay which may be considered for waiver. Where the employee has insufficient leave to his credit to cover the adjustment, then to the extent that such leave reduction produces a negative leave balance, the employee has received pay to which he is not entitled. Only that amount is subject to possible waiver. This is based on the fact that the statute authorizing waiver, 5 U.S.C. § 5584, extends to overpayments of pay and allowances. Daniel F. Cejka, 63 Comp. Gen. 210 (1984); Bessie P. Williams, B-208293, August 15, 1983.

In the present case, the reconstruction of Mr. Barksdale's leave account on an annual year basis to reflect the proper rate of leave accrual resulted in a determination that he was overpaid \$646.56. The overpayment of this amount has been waived under 5 U.S.C. § 5584. The remaining hours, which were deducted from his leave balance do not constitute an overpayment. Mr. Barksdale asserts that since the erroneous credit of leave to his account was due to a mistake made by the Government and he, in good faith, relied upon it, the hours should be reinstated. While it is unfortunate that Mr. Barksdale relied on the erroneously credited leave the Government is not estopped from correcting the error. Nor does the error in determining Mr. Barksdale's service computation create liability on the part of the Government, since it is a well established rule that the Government may not be bound by the erroneous acts or advice of its agents. E. Paul Tischer, M.D., 61 Comp. Gen. 292 (1982). Thus, our Claims Group's settlement allowing waiver of the erroneous overpayment of \$646.56 is affirmed and we find no basis to recredit Mr. Barksdale's annual leave account with the 123 hours deducted by the Army.

for Milton J. Arnold
Comptroller General
of the United States