



The Comptroller General
of the United States

Washington, D.C. 20548

Jordan
PLM II

Decision

Matter of: Walter Schmidt

File: B-223238

Date: February 27, 1987

DIGEST

An employee scheduled annual leave for use in November because he was told that no leave requests would be granted in December and January but became ill so that he was unable to take the annual leave as scheduled. He returned to work from sick leave 10 workdays before the end of the leave year but did not request rescheduling of annual leave for that period and, thus, forfeited 80 hours of leave. He is entitled to restoration of his leave under 5 U.S.C. § 6304 and Office of Personnel Management guidelines since he scheduled the leave in advance and his illness occurred late in the year and was for such duration that by the time he returned to work his leave would not have been approved, even if he had formally requested it, because of the exigencies of the public business.

DECISION

This decision is in response to a request from the Assistant Director, Fish and Wildlife Service, Department of the Interior, for an opinion concerning whether an employee who scheduled excess annual leave during November 1985, but was unable to take the leave due to illness, may have 80 hours of his forfeited annual leave restored even though he did not reschedule it during the remaining 10 days of the leave year after he returned to work. Under 5 U.S.C. § 6304 and the Office of Personnel Management (OPM) guidelines on the subject, the employee is entitled to restoration of all of his forfeited leave since when he returned to work there were only 10 days left in the leave year and he could not reschedule the leave within the appropriate period.

BACKGROUND

Mr. Walter Schmidt, a District Field Assistant with the U.S. Fish and Wildlife Service, scheduled 144 hours of annual leave for use during the period of November 4 through November 25, 1985. He became ill on November 4 and was on sick leave through December 18, 1985. After returning to work on December 19, Mr. Schmidt did not attempt to reschedule the annual leave during the time remaining in the current leave

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year because, before his illness, he was informed by his supervisor that no leave would be approved in December 1985 or January 1986 due to the increased staffing needs of his office. Consequently, Mr. Schmidt forfeited the 144 hours of annual leave that he was unable to use.

The Fish and Wildlife Service reviewed Mr. Schmidt's case to determine whether it should restore any of Mr. Schmidt's 144 hours of forfeited leave under 5 U.S.C. § 6304. It determined that because at the time he returned to work from sick leave there remained 10 workdays in the leave year and he did not attempt to reschedule annual leave for that period, 80 hours (10 days) of the forfeited leave could not be restored. The Service further determined, however, that the remaining 64 hours could be restored, and those hours were recredited to his account.

The Assistant Director indicates, however, that in view of the unusual circumstances in this case he is giving further consideration to whether the 80 hours of forfeited leave also should be restored. He refers specifically to the advance notice Mr. Schmidt's supervisor gave Mr. Schmidt that no leave would be approved for use during December and January. Thus, the Assistant Director states that, consequently, Mr. Schmidt saw no purpose in going through a fruitless exercise by trying to schedule leave immediately after he returned from sick leave for a period for which no leave would be approved. In view of the resulting inequity to the employee, the Assistant Director requests our decision on whether the 80 hours may be restored.

ANALYSIS

Section 6304(d)(1) of title 5, United States Code, provides that annual leave which is forfeited due to leave accumulation ceilings imposed by § 6304 may be restored under certain specified circumstances. Those circumstances include when leave was scheduled in advance and the forfeiture was caused by "exigencies of the public business" or by "sickness of the employee."

As to scheduling leave in advance, 5 C.F.R. § 630.308 provides that:

* * * before annual leave forfeited under section 6304 of title 5, United States Code, may be considered for restoration under that

section, use of the annual leave must have been scheduled in writing before the start of the third biweekly pay period prior to the end of the leave year."

Federal Personnel Management (FPM) Letter No. 630-22, January 11, 1974, provides guidelines concerning the restoration of forfeited annual leave.

Section 5 of the Attachment to the FPM Letter explains the restoration provisions of 5 U.S.C. § 6304, with regard to the restoration of annual leave forfeited due to the sickness of an employee. The guidelines provide that to have annual leave restored after an illness, an employee must have scheduled the leave in advance. Also, an employee's absence due to illness must occur at a time during the leave year, or last for such duration, that annual leave cannot be rescheduled before the end of the leave year in order to avoid forfeiture. The guidelines also state that an employee's illness may not, in and of itself, be a basis for allowing annual leave to be forfeited and then restored. Management is responsible for scheduling and rescheduling annual leave in order to avoid forfeiture when an employee is absent from work because of sickness. This is especially true where there is advance notice that an employee will be absent before the end of the leave year due to some medical conditions.

According to the OPM guidelines addressing the scheduling requirements, the date for scheduling leave in writing applies "only to those situations involving the possible forfeiture and restoration of annual leave * * *." The guidelines make it clear that management and employees should attempt to schedule annual leave well before the beginning of the third biweekly pay period prior to the end of the leave year.

In this case, Mr. Schmidt complied with the scheduling requirements when he scheduled his leave for use in November, but his illness prevented his using the leave as scheduled. The Assistant Director states that when Mr. Schmidt returned to work on December 19 following his illness, he did not reschedule his annual leave because he did not think it would be granted since his supervisor had advised him that no leave would be approved for December and January.

Since, as the Assistant Director indicates, a formal attempt to reschedule the leave for the last 10 workdays of the leave year would have been fruitless, we agree that the fact that Mr. Schmidt did not go through that exercise need not bar restoration of his leave in these circumstances. Thus, Mr. Schmidt qualifies for restoration of his annual leave since he scheduled the leave in advance and he became ill so late in the year and for such a duration that he was unable to reschedule it since the remaining time in the leave year was a time when it had been determined the exigencies of the public business prevented granting of leave.

For the reasons stated above, Mr. Schmidt is entitled to restoration of the 80 hours of his forfeited annual leave in addition to the 64 hours previously restored by the agency. His leave account should be adjusted accordingly.

for Milton J. Fowler
Comptroller General
of the United States