



The Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: Verda L. Campbell - Lump-Sum Payment for Annual
Leave
File: B-221067
Date: June 1, 1987

DIGEST

Former employee claims backpay equal to amount agency deducted from her lump-sum leave payment to cover overpayments of pay for periods of alleged absence without leave. It is within agency's administrative discretion to place employees who refuse to comply with order to report to work on leave without pay. In view of the administrative discretion which exists with respect to determinations concerning absence from duty, and in the absence of any finding by an appropriate authority of an unjustified or unwarranted personnel action, her claim is denied.

DECISION

Ms. Verda L. Campbell, a former employee of the United States Army Forces Command, Fort McPherson, Georgia, asks for a review of the Army's actions in deducting an amount of money sufficient to cover overpayments of pay for periods of absence without leave (AWOL) from the lump-sum payment due her for unused annual leave after her resignation. Ms. Campbell seeks to recover as backpay the sum of \$1,756.80 withheld from her lump-sum annual leave payment. For the reasons set forth below, we hold that Ms. Campbell's claim for backpay must be denied.

BACKGROUND

The Army served Ms. Campbell with a letter, dated May 8, 1985, proposing her removal from Government service and setting forth the reasons for her proposed removal, including charges for AWOL. Without objection or grievance, and prior to a decision concerning this proposed removal, Ms. Campbell submitted her resignation dated June 16, 1985, with a proposed effective date of July 5, 1985. The Notification of Personnel Action (SF 50) documenting the resignation included both the reasons of health offered by Ms. Campbell, and the agency finding that Ms. Campbell resigned after being notified of a proposed removal action for alleged excessive AWOL and alleged insubordination.

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The Army reports that the retroactive charges for excessive AWOL resulted from Ms. Campbell's failure to inform her supervisor of a reduction in the number of course credits for which she was enrolled at the University of Texas in connection with a government-approved program for the Fall 1984 semester. This reduction in course load had the effect of changing Ms. Campbell's student status from full-time to part-time and reducing her pay entitlement. Ms. Campbell did not request or receive approval from her supervisor for this significant deviation in her approved long-term training curriculum and when the Army subsequently learned of this unauthorized curriculum reduction, Ms. Campbell's supervisor ordered her back to work at her permanent duty station. Ms. Campbell refused this order and in fact never reported back to work prior to her resignation. After receiving Ms. Campbell's resignation, the Army elected not to proceed with its proposed removal action and processed her payment for accrued unused annual leave by offsetting \$1,756.80 from her final leave payment to cover salary overpayments for the periods of AWOL when Ms. Campbell refused to report back to work.

Although Ms. Campbell had neither objected to nor grieved her proposed removal by the Army prior to her resignation, she filed a petition on August 30, 1985, with the Merit Systems Protection Board (MSPB), appealing the agency's action in issuing a proposal to remove her from federal service and deducting monies from her lump-sum leave payment for the alleged AWOL. The Presiding Official of the MSPB issued an initial decision, Verda L. Campbell v. Department of the Army, Docket No. DA-7528510570 (October 31, 1985), which cited the voluntariness of her resignation and her failure to establish a matter the MSPB would review as bases for dismissing the appeal for lack of jurisdiction. Ms. Campbell did not appeal that decision.

OPINION

In bringing her claim to this Office, Ms. Campbell rejects the Army's "retroactive" change of her status to AWOL during the period of her failure to comply with the Army's back-to-work order.^{1/} However, in the absence of

^{1/} It appears that the Army erroneously carried Ms. Campbell in a duty status during this period, thereby requiring a retroactive adjustment to show her status as AWOL.

evidentiary arguments that the Army's actions in her case constituted an unjustified or unwarranted personnel action within the meaning of the Back Pay Act, 5 U.S.C. § 5596, Ms. Campbell has failed to provide a legal basis on which her claim may be paid. In short, she has failed to meet her burden of proving the Government's liability to refund the monies claimed by her as required by 4 C.F.R. Part 31 (1986).

Under the Back Pay Act, backpay may be awarded only when the employee is found by an appropriate authority to have been affected by an unjustified or unwarranted personnel action. After her resignation Ms. Campbell was advised by letter dated August 15, 1985, by the Fort McPherson Finance and Accounting Office concerning her indebtedness to the Federal Government as a result of the charges to AWOL and the reasons for the deductions to recoup the monies which she had erroneously received in salary for those periods of unexcused absence. The Army found that, based on a review of the case, there was no basis to conclude that the deductions made from the lump-sum annual leave payment to cover the repayment of the period which had been retroactively charged to AWOL were either unjustified or unwarranted. In addition, as indicated above, there has been no finding by the Merit Systems Protection Board that the pay deductions were unjustified or unwarranted as a result of her appeal.

We have consistently recognized that the placing of an employee in an AWOL status is a matter of administrative discretion and that it is legally proper for an administrative officer to take such action when an employee voluntarily and without authorization absents herself from an official duty status. See 44 Comp. Gen. 274 (1964); B-159452, April 26, 1976; and Anita M. Blaicher, B-186095, April 26, 1976.

In the present case, therefore, we conclude that Ms. Campbell's supervisors acted within their authority in retroactively changing her status to AWOL during the period she failed to comply with the lawful order to return to work, and the consequent offsetting of her lump-sum leave payment to reimburse the Government for salary overpayments during that period. Since Ms. Campbell has offered no evidence to rebut the propriety of the Army's actions here, and since no appropriate authority has determined that Ms. Campbell underwent an unjustified or unwarranted personnel action incident to her claim, she is not entitled to backpay or leave restoration.

Her claim is disallowed accordingly.

for *Milton J. Jacobs*
Comptroller General
of the United States