



The Comptroller General
of the United States

Washington, D.C. 20548

135354

Decision

DECISION NO. 135354
FEB 19 1988

Matter of: Rikka Pulliam - Restoration of Annual Leave -
Scheduling Requirement

File: B-229228

Date: January 21, 1988

DIGEST

An employee did not schedule annual leave in advance and in writing as required by 5 U.S.C. § 6304(d)(1) (1982) and the implementing regulations. The annual leave forfeited due to the exigencies of public business may not be restored under the statute and regulations since the leave was not scheduled in advance. The statutory scheduling requirement is not met by informal notification or verbal request, and the requirement may not be waived or modified even where extenuating circumstances may exist.

DECISION

This decision is in response to a request by Ms. Rikka Pulliam for review of a Claims Group settlement denying her claim for restoration of forfeited annual leave. Her claim was denied because the forfeited leave was not scheduled in advance and in writing under the requirements of 5 U.S.C. § 6304(d)(1)(B) (1982) and the applicable regulations. For the reasons stated below, we affirm our Claims Group settlement.

BACKGROUND

Ms. Pulliam, a former deputy clerk of the U.S. Bankruptcy Office, Houston, Texas, claims reimbursement for 129 hours of annual leave which were forfeited in 1983, apparently due to the press of work in her office. In 1984, Ms. Pulliam resigned her position as deputy clerk and requested a lump-sum payment for the annual leave she believed should be restored. Ms. Pulliam claims that she had verbally requested use of the leave prior to the end of the leave year, although the record does not contain any affidavits by her supervisors to this effect. Further, there is no written documentation of this request indicating the amount of leave or specific dates she wished to schedule.

Ms. Pulliam's request for payment of restored leave was denied by the Administrative Office of the United States Courts, which oversees the personnel of the bankruptcy offices. The Administrative Office based its denial on the fact that the supporting documentation required by the leave regulations, i.e., a request by Ms. Pulliam in writing for leave to be taken on specific dates before the end of the leave year, was not provided.

Ms. Pulliam appealed this decision to our Claims Group, which issued Settlement Certificate Z-2863454 on September 14, 1987. In denying Ms. Pulliam's claim for restored leave, our Claims Group noted that the statute and regulations require that the leave must have been scheduled in advance and in writing in order to be considered for restoration and that this requirement may not be waived or modified even where extenuating circumstances may exist. Michael Dana, 56 Comp. Gen. 470 (1977). Our Claims Group stated further that the failure to give actual notice of this scheduling requirement to the employees is not an administrative error since the employees are charged with actual or constructive notice of the requirement. Our Claims Group denied the claim since there was no documentary evidence that Ms. Pulliam's leave was scheduled in advance, nor was there any indication that the agency made an administrative error.

Ms. Pulliam now seeks a reversal of the Claims Group settlement. In her appeal letter, Ms. Pulliam argues that 56 Comp. Gen. 470 (1977) has no bearing on her situation since she was told by her immediate supervisor that restored leave had been approved and since her request for restored leave was in advance and in writing. Ms. Pulliam indicates that an SF-1150 approving restored leave was signed by her supervisor and that the supervisor retains that documentation. Ms. Pulliam also reiterates that the forfeiture was a result of the exigencies of public business since at the time the leave was lost the office was understaffed and overworked. Ms. Pulliam contests the number of hours due her although she does not present the number she believes to be accurate. We note, however, that Ms. Pulliam did not present any documentation to support the contentions in her appeal.

OPINION

Under 5 U.S.C. § 6304 (1982), annual leave which exceeds the accumulation permitted by law (normally 30 days or 240 hours) is forfeited at the beginning of the first full pay period in a year. Forfeited annual leave may be restored under the limited circumstances set out in subsection 6304(d)(1) of title 5, United States Code (1982), which provides:

"(d)(1) Annual leave which is lost by operation of this section because of -

(A) administrative error when the error causes a loss of annual leave otherwise accruable after June 30, 1960;

(B) exigencies of the public business when the annual leave was scheduled in advance; or

(C) sickness of the employee when the annual leave was scheduled in advance;

shall be restored to the employee." (Emphasis added.)

The Office of Personnel Management's implementing regulations and guidelines, issued pursuant to 5 U.S.C. §§ 6304(d)(2) and 6311, are contained in Federal Personnel Manual Letter No. 630-22, Jan. 11, 1974. The regulations, but not the guidelines, have been codified in Subpart C, Part 630, title 5, Code of Federal Regulations (1983).

For restoration of leave under subsection (B), cited above, there is a statutory requirement that the annual leave be scheduled in advance. Michael Dana, 56 Comp. Gen. 470 (1977). Regarding this requirement, 5 C.F.R. § 630.308 provides:

"Beginning with the 1974 leave year, 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." (Emphasis added.)

In Carl J. Ronollo, B-191379, Sept. 28, 1978, we noted that the rule requiring approval in writing stems from the legislative history of section 6304(d)(1) itself, and we quoted from that legislative history as follows:

"The committee intends that for purposes of complying with the 'scheduled in advance' requirement, some formal documentation will have to be furnished to show that the employee, a reasonable time before the end of the leave year, did, in fact, request a certain amount of annual leave in advance, that such request was approved by the appropriate authority, and that such annual leave was lost due to the exigencies of the service or sickness of the employee. H.R. Rept. No. 93-456, 93rd Cong., 1st Sess. 9 (1973)."

In connection with this scheduling requirement paragraph 2 of FPM Letter No. 630-22 states in pertinent part as follows:

"2. Annual leave is an important and significant benefit for employees at all levels. The new law focuses specific attention on the long-standing employee-management mutual responsibility to plan and schedule the use of annual leave throughout the year. The scheduling of leave is so important that the law makes it a prerequisite to the restoration of annual leave that may be forfeited because of exigencies of the public business or because of sickness. * * *"

Informal notification or verbal request by employees for leave does not meet the documentation requirements of the law and regulations. Furthermore, we have consistently held that the scheduling requirement under 5 U.S.C. § 6304(d)(1)(B) may not be waived or modified even where extenuating circumstances exist. Dr. W. Newlin Hewson, B-193567, May 24, 1979; Dana, supra.

For example, in B-191540, Dec. 8, 1978, annual leave was forfeited at the end of the 1977 leave year by an FBI special agent. We held that, even though the special agent had not formally scheduled and could not use the leave because of an undercover assignment, it could not be restored since it was not scheduled in writing in advance. Since this scheduling requirement is imposed by statute, all employees are charged with notice of it, and the requirement may not be waived even under the extenuating circumstances in that case. See Ronollo, cited above.

Thus, the burden is on the employee to properly schedule the leave in advance. The failure of the agency to advise the employee of the scheduling requirement does not constitute administrative error, except where the agency has a written regulation requiring that employees be counseled on the

possible forfeiture of annual leave. See John J. Lynch, 55 Comp. Gen. 784 (1976); Hewson, *supra*. However, there is nothing in the record which would indicate that the Administrative Office or the bankruptcy office have such a regulation.

In this case, since Ms. Pulliam's use of her annual leave was never approved in writing by her supervisor, it was not scheduled in advance within the meaning of subsection 6304(d)(1)(B), and it may not be restored under that subsection. The fact that Ms. Pulliam's supervisor may have applied for or approved restored leave before the end of the leave year does not meet the scheduling requirement of the law and its implementing regulations. That requirement contemplates that the request to use a specific amount of annual leave on specific dates be submitted and approved at least three pay periods in advance of the end of the leave year. If such scheduled leave is not used, it is forfeited, and a request for restored leave may be submitted. However, the determining factor in recovery under the statute is the formal scheduling of the annual leave which is forfeited. It is not sufficient to verbally schedule an indeterminate amount of annual leave and later, when the leave may be forfeited, file for restored leave before the end of the leave year. Here, it is not even clear from the record when or whether Ms. Pulliam verbally requested use of some of her annual leave.

Accordingly, we affirm the Claims Group's disallowance of Ms. Pulliam's claim for restoration of her forfeited annual leave.


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