



The Comptroller General
of the United States

Washington, D.C. 20548

Dunn

Decision

Matter of: Marquerite D. Roberts - Workers' Compensation -
Forfeiture of Annual Leave After Leave Adjustment
File: B-233428
Date: October 6, 1989

DIGEST

An employee who used annual and sick leave in leave years 1979, 1980, 1984, and 1985 incident to a work-related illness, elected to buy back leave used and accept workers' compensation. Upon reconstruction of the employee's leave record to show the recredit of the leave as of the time it was used, there is a loss of accrual of leave for the period changed. Further, annual leave reinstated in excess of the maximum carryover stated in 5 U.S.C. § 6304(a) is subject to forfeiture and may not be restored under 5 U.S.C. § 6304(d)(1).

DECISION

This is in response to a request by Ms. Marguerite D. Roberts for reconsideration of our Claims Group's settlement Z-2864724, June 23, 1988, which sustained the action by the National Park Service, Department of the Interior, disallowing her claim for additional payment of lump-sum leave incident to her retirement. The issue is whether annual leave recredited to Ms. Roberts as a result of her buy-back of leave used incident to a work-related illness was subject to forfeiture under 5 U.S.C. § 6304(a) (1982) and can not be restored to her under 5 U.S.C. § 6304(d)(1). Ms. Roberts also requests payment for the accrued leave lost when her leave records were reconstructed to reflect the change from paid leave status to leave without pay. For the reasons stated below, we sustain the Claims Group's settlement.

BACKGROUND

Ms. Roberts was employed by the Rocky Mountain Regional Office of the National Park Service before her retirement on March 30, 1985. While employed there, Ms. Roberts suffered a work-related illness on two separate occasions.

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During the periods of her disability she used varying amounts of leave pending a determination by the Department of Labor on her claims for compensation under the Federal Employee's Compensation Act, 5 U.S.C. § 8101-51. The two periods in question were from August 17, 1979, to March 2, 1980, and from September 12, 1984, to February 25, 1985. Upon approval of her two workers' compensation claims, Ms. Roberts bought back annual and sick leave used during the time she was disabled due to her illness.

In computing the annual leave available for buy-back, the agency reconstructed Ms. Roberts's leave records on a pay period basis as of the time the leave was used to reflect the change from paid leave status to leave without pay (LWOP) and to recredit the annual and/or sick leave. See Federal Personnel Manual Letter 630-31, October 6, 1983. In changing the records from leave with pay to leave without pay there is generally a loss of accrual of leave for the period changed. There also may be a forfeiture in the case of annual leave carried over into the next leave year in excess of the statutory ceiling of 240 hours. See 5 U.S.C. § 6304(a). Ms. Roberts did lose leave as a result of the reconstruction due both to the loss of accruals when leave without pay was substituted for leave with pay and forfeiture of leave under 5 U.S.C. § 6304(a).

While Ms. Roberts does not question the agency's computations, she argues that she should be reimbursed for the full amount of the annual leave she took (i.e., 772 hours). Ms. Roberts believes that the hours of annual leave that were over the 240-hour limit for carryover should be restored under 5 U.S.C. § 6304(d)(1), since the leave was scheduled in advance and could not be used due to illness. Further, citing our decision in Edmond Godfrey, 62 Comp. Gen. 253 (1983), Ms. Roberts contends that the agency did not counsel her about the fact that annual leave recredited as a result of a buy-back is subject to forfeiture under 5 U.S.C. § 6304 and that as a result of leave reconstruction there would be a loss of leave accruals.

OPINION

In computing the annual leave available for buy-back, the agency reconstructed Ms. Roberts's leave records in accordance with the requirements in FPM Letter 630-31, supra. Accordingly, it was proper to deduct the amount of leave accrued over the periods in question since leave may not be accrued in periods charged to leave without pay.

Likewise, regarding leave forfeiture after reconstruction, we have consistently held that leave recredited as a result of buy-back is subject to forfeiture under 5 U.S.C. § 6304(a). Further, we have held that the exceptions to the annual leave forfeiture rule provided in 5 U.S.C. § 6304(d) are not applicable in a situation involving the buy-back of annual leave. When an employee has charged leave properly, it has not been forfeited under 5 U.S.C. § 6304(d) and therefore cannot be restored under that section. Helen Wakus, B-184008, Mar. 7, 1977; Phoebe Nelson, B-184307, Oct. 21, 1975.

Ms. Roberts states that the National Park Service did not counsel her that annual leave recredited as a result of a buy-back is subject to forfeiture under 5 U.S.C. § 6304(a). The failure to counsel an employee, incident to the buy-back of leave she had used, would not prevent the operation of the forfeiture rule of 5 U.S.C. § 6304(a). See Betty J. Anderson, B-182608, Aug. 9, 1977.

Ms. Roberts cites our decision in Edmond Godfrey, 62 Comp. Gen. 253 (1983), in support of her claim. In Godfrey, we held that an employee who buys back annual leave following a workers' compensation award must have his annual leave record reconstructed to show the recredit of the leave as of the time it was used and that in such a reconstruction, annual leave reinstated in excess of the maximum permissible carryover would be forfeited. However, we also held that an employing agency is obligated under 20 C.F.R. § 10.310 to advise an employee of all costs associated with buy-back, including the potential forfeiture of repurchased leave upon reconstruction of the employee's leave account. Since the employing agency had failed to apprise Mr. Godfrey of the consequences of buy-back, we stated that we would have no objection to the agency's retroactively placing him on annual leave during the period of his claim to the extent necessary to avoid a forfeiture. This procedure requires a refund of worker's compensation payments for the period of reinstated annual leave.

The administrative remedy suggested in Godfrey is permissive, not mandatory, and in any event does not support Ms. Roberts's claim for reimbursement of the full amount of annual leave she took. The only basis for restoring annual leave which has been forfeited as the result of an administrative error is provided in 5 U.S.C. § 6304(d)(1)(A), and as noted above we have consistently held that the provisions of 5 U.S.C. § 6304(d) do not apply in situations involving the buy-back of annual leave. See also Donald A. Adams, B-204522, Mar. 23, 1982.

Accordingly, we sustain our Claims Group's denial of Ms. Roberts's claim.

Milton J. Fowler
for Comptroller General
of the United States