



Comptroller General  
of the United States  
Washington, D.C. 20548

# Decision

**Matter of:** Stephen C. Small  
**File:** B-250228  
**Date:** February 22, 1993

## DIGESTS

1. An employee's annual leave account was overcredited due to agency error as to his service computation date. Where the overcredit of annual leave has occurred during years prior to the year in which the error was discovered, the employee's leave account is to be reconstructed for each separate year involved to arrive at the proper current leave balance, and to determine whether an erroneous payment of salary occurred in any year where excessive use of leave resulted in a negative leave balance, the value of which becomes a debt due the United States subject to waiver.
2. An employee's annual leave account was overcredited due to agency error as to his service computation date. Where the overcredit of annual leave has occurred in the year in which the error was discovered, since an employee may be advanced annual leave for his use during the year so long as the erroneous leave already credited him has not caused his leave accrual to exceed his maximum entitlement for the year, the overcredit may remain to his credit and be adjusted from proper leave earnings during the balance of the year.

## DECISION

This decision responds to a request from the United States Army Armament Research, Development and Engineering Center, Picatinny Arsenal, New Jersey,<sup>1</sup> concerning the adjustment required to be made where an employee has been overcredited with annual leave.

Mr. Stephen C. Small was hired by the U.S. Army Armament Research, Development and Engineering Center (ARDEC) on October 5, 1989, as a civilian employee. Since he was retired from military service for disability he was credited with 10 years and 26 days of military service. As a result,

<sup>1</sup>Mr. Thaddeus H. Godzwa, Finance and Accounting Officer.

he began accruing annual leave at the rate of 6 hours per pay period.

In July 1992, the ARDEC Civilian Personnel Office, discovered that, although Mr. Small had been retired from military service for disability, his disability had not been incurred as a direct result of armed conflict or by an instrumentality of war during a period of war. As a result, his service time was not creditable as years of service for annual leave accrual purposes and he only was entitled to accrue leave at the rate of 4 hours a pay period when he was hired.<sup>2</sup>

Upon reconstructing Mr. Small's annual leave account, the agency determined that he had used more leave than he earned for leave years 1989 and 1990. This resulted in negative leave balances of a minus 8 hours and a minus 28 hours, respectively. However, for leave year 1991, he had sufficient accrued and unused annual leave to his credit that when his leave account was reconstructed, he retained a positive leave balance after the downward adjustment. Further, when Mr. Small's annual leave account was adjusted for 1992, his annual leave balance, including the adjusted annual leave carry-over from 1991, also resulted in a positive leave balance, effective July 25, 1992.

Mr. Small objects to the immediate reduction of his annual leave balance and seeks an alternative method by which the previous overcredit of leave could be recovered from him. The agency has suggested that he might be permitted to retain the overcredit to his account, and simply recover it from future leave earnings.

Under the provisions of 5 U.S.C. § 6303(a) (1988), a federal employee earns annual leave at either 4, 6, or 8 hours a pay period, based on the specified number of years of creditable service. Thus, until an employee has acquired sufficient years of creditable service to qualify for annual leave accrual under subsection (a) (2) or (a) (3), the rate of annual leave which he may accrue each biweekly pay period is limited to 4 hours under subsection (a) (1). In conjunction with the above, 5 U.S.C. § 6304 provides that an employee is permitted to accumulate unused annual leave for use in succeeding leave years, but that not more than 240 hours of unused annual leave may be carried forward into a new leave year.

Consequently, we have held in prior decisions that when an employee has been credited annual leave at an incorrect rate over more than 1 year, his leave account must be

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<sup>2</sup>5 U.S.C. § 6303(a) (A) (1988).

reconstructed for each separate year involved in order to establish his correct annual leave balance at the end of each leave year. This is necessary in order to determine the hours of unused leave he may lawfully carry forward into the new leave year, or determine whether an erroneous payment of salary was made to him for any one year.<sup>3</sup>

The method used by the agency to reconstruct Mr. Small's annual leave account for the years 1989, 1990 and 1991 is correct. As reconstructed, he used 8 more hours of annual leave than he earned in 1989. This resulted in an overpayment of salary that year in the amount of \$110.56. In 1990, he had no annual leave carryover from 1989, and he used 28 more hours of annual leave than could be credited to him that year. This resulted in an overpayment of salary in 1990 of \$414.40, for a total of \$524.96. When his 1991 leave year was reconstructed he had no annual leave accumulation that could be carried forward from the 1990 leave year. Since he used fewer hours of annual leave during 1991 than he properly earned, only his unused leave accumulated in 1991 (48 hours) was available to be carried forward into the 1992 leave year as a beginning balance.

Mr. Small raises objection to immediate reduction of his leave balances for the years 1989, 1990, and 1991, but, since each leave year must be separately adjusted to determine the correct current leave balance, we are not aware of a legal basis upon which those hours of annual leave improperly credited to him may remain to his credit and be recovered from future leave accruals. However, that result is not required for the leave year in which the error was discovered. (January 12, 1992, to January 9, 1993). Section 6302(d) of title 5 U.S. Code provides:

"(d) The annual leave provided by this subchapter, including annual leave that will accrue to an employee during the year, may be granted at any time during the year as the head of the agency concerned may prescribe."

That provision permits agencies to grant annual leave at any time during a leave year in advance of its accrual, but the amount of annual leave so advanced may not exceed the annual leave which will accrue to the employee for the year, plus the unused annual leave accumulation authorized to be carried over from the previous year into that leave year. It is contemplated that where leave is so advanced, it will be made up by biweekly annual leave earnings over the balance of the leave year. By regulation, repayment in this

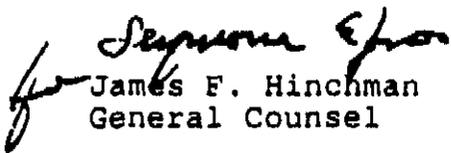
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<sup>3</sup>Lester L. Jefferson, B-219000, Oct. 9, 1985, and decisions cited.

manner has been extended into the succeeding leave year, when required.<sup>4</sup>

We believe that this concept can be applied to situations where employees have been credited with annual leave during a current leave year at the incorrect rate. That is, since there is no requirement that excess leave already credited during a current leave year be subtracted from an employee's annual leave balance immediately on discovery, so long as the excess leave already credited that year has not caused the employee's annual leave accrual for the year to exceed his maximum leave entitlement that year, it may remain to his credit with the excess credit to be recovered from future leave earnings at the correct accrual rate during the balance of the leave year, or liquidated through use of compensatory time over the same period.<sup>5</sup> In Mr. Small's situation, since the annual leave hours improperly credited to him in 1992 at the date of discovery (84 hours) had not exceeded his leave accrual entitlement for the year, those hours could have remained to his credit subject, of course, to usage, with the overcredit recovered in the manner stated above.

With regard to Mr. Small's debt to the United States created by the negative leave balances in 1989 and 1990, in view of the agency's authority under 5 U.S.C. § 5584 (1988), as amended, and 4 C.F.R. Parts 90 and 91, to waive debts not exceeding \$1,500, if the agency is satisfied that the credit Mr. Small received for his military service was due to an administrative error and there is nothing to show that he knew or should have known that he was not entitled to that credit, Mr. Small's debt may be waived.

  
James F. Hinchman  
General Counsel

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<sup>4</sup>5 C.F.R. § 630.208 (1992). See also 45 Comp. Gen. 243 (1965) and 32 Comp. Gen. 298 (1952).

<sup>5</sup>59 Comp. Gen. 253 (1980).