



Office of the General Counsel

B-253928

April 12, 1994

Mrs. Patricia A. Lloyd
Director, Policy and Planning Division
U.S. Department of Housing and Urban
Development
451 Seventh Street, NW
Washington, DC 20410-3000

Dear Mrs. Lloyd:

This is in response to your letter, dated June 21, 1993, concerning whether Mr. [redacted] is entitled to restoration of 4 more hours of forfeited annual leave for December 24, 1992.

The record shows that in January 1993, the Department of Housing and Urban Development (HUD) considered the request of Mr. [redacted] to restore 120 hours of annual leave which was forfeited at the end of the 1992 leave year due to an exigency which occurred in Mr. [redacted] office on December 14, 1992. On that date, HUD notified Mr. [redacted] that his previously scheduled request to use a total of 120 hours of annual leave from December 17, 1992 through January 8, 1993, (the entire amount of time remaining through the end of the 1992 leave year), was canceled due to that exigency. As a result, Mr. [redacted] forfeited 120 hours of annual leave at the end of the 1992 leave year.

On December 18, 1992, 4 days after HUD had canceled Mr. [redacted] previously scheduled request for 120 hours of annual leave, the President issued Executive Order 12825, closing government offices for one-half day on Thursday, December 24, 1992.¹ In conjunction with that Executive Order, the Office of Personnel Management (OPM) issued instructions concerning the impact on pay and leave administration for December 24, 1992.² Those instructions state that the last half of the scheduled workday on

¹See 57 Fed. Reg. 60973 (Dec. 22, 1992).

²See Memorandum (w/attachment) from Claudia Cooley, Associate Director for Personnel Systems Oversight to Directors of Personnel, dated Dec. 18, 1992.

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December 24, 1992, will be considered a holiday for pay and leave purposes, that an employee who has already received approval for leave for the last half of the workday of December 24, 1992, will be excused from work without loss of pay or charge to leave for that period of time, and that employees who have scheduled "use or lose" annual leave for that period of time will forfeit such leave unless they make arrangements to schedule another period of annual leave before the end of the leave year.

On February 26, 1993, HUD restored 116 hours of Mr. [redacted] forfeited annual leave, pursuant to 5 U.S.C. § 6304(d)(1)(B) (1988), out of the 120 hours he had requested. Since Mr. [redacted] had retired, HUD sent him a lump-sum payment for those hours. However, it denied his request for restoration of 4 more hours of annual leave for the last half of December 24, 1992, because it interpreted Norfolk Naval Shipyard, 68 Comp. Gen. 630 (1989) as requiring that result.

In the instant case, while Mr. [redacted] had originally scheduled 8 hours of annual leave for December 24, 1992, he was rescheduled to work for 8 hours on that day. Due to Executive Order 12825, however, Mr. [redacted] only worked 4 hours and was given 4 hours of paid time off without charge to leave.

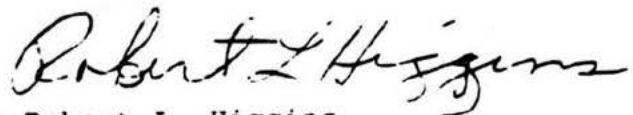
If Mr. [redacted] had been allowed to use his annual leave as originally scheduled, he would have forfeited 4 hours of annual leave because it would have been impossible to reschedule those 4 hours for use during the remainder of the 1992 leave year. We have held that there is no authority to permit the crediting or use of the excess leave which is forfeited because a closing of federal offices was declared by the President on a day that annual leave was scheduled to be used, and that the forfeited annual leave in such situations is not within the scope of the restoration provisions of 5 U.S.C. § 6304(d)(1) (1988). Norfolk Naval Shipyard, 68 Comp. Gen. 630 (1989) and decisions cited therein.

The result (forfeiture of 4 hours of excess annual leave) is the same in Mr. [redacted] circumstances. He did not forfeit the 4 hours due to exigencies of the public business, as 5 U.S.C. § 6304(d)(1)(B) requires for restoration of forfeited annual leave. Rather, he forfeited the 4 hours because his leave was scheduled for so late in the 1992 leave year that there was no time remaining in which he could schedule annual leave after the half-day holiday of December 24, 1992, was declared by the President. Furthermore, the half-day closing of federal offices by the President cannot constitute an administrative error or otherwise trigger any of the premises for restoration of forfeited annual leave of 5 U.S.C. § 6304(d)(1) (1988).

Norfolk Naval Shipyard, 68 Comp. Gen. 630, supra, and decisions cited therein.

In accordance with the OPM Instructions referred to previously and the decisions cited above, your agency's decision to deny Mr. request for restoration of 4 more hours of forfeited annual leave was correct.

Sincerely yours



Robert L. Higgins
Associate General Counsel

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DIGEST

Employee seeks restoration of 4 more hours of forfeited annual leave for December 24, 1992. This leave was not forfeited due to exigencies of the public business, as 5 U.S.C. § 6304(d)(1)(B) (1988) requires for restoration. Rather, it was forfeited because the employee's leave was scheduled so late in the 1992 leave year that there was no time remaining in which he could schedule annual leave after the half-day holiday of December 24, 1992, was declared by the President. Claim is denied.