

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

51004

FILE:

DATE: AUG 21 1975

MATTER OF: B-183723

97462

Burton H. Jaffe - Adjustments of Absence
Without Leave Charges

DIGEST:

Equal Employment Opportunity Commission employee claims compensation for charges of absence without leave. There is no entitlement since, when there is dispute as to the facts, the General Accounting Office will accept the agency's statement of facts absent a preponderance of evidence to the contrary, and the employee has not presented such evidence.

This decision results from a request for review of the action of our Transportation and Claims Division (TCD) dated March 3, 1975, on the claim of Burton H. Jaffe for restoration of annual leave charges in his leave and pay records and removal of two absent without leave (AWOL) charges made by his former employer, the Equal Employment Opportunity Commission (EEOC).

On three occasions in 1973 the EEOC charged Mr. Jaffe annual leave for a total of 5 hours. In one instance the time card was not initialed as procedure requires before an employee's account may be charged, and in the other two the initials recorded were not those used by Mr. Jaffe. Also, the EEOC charged Mr. Jaffe a total of 8 hours AWOL for leaving his assigned work area without authorization on two occasions. His salary was reduced for such absences and he was issued a letter of reprimand dated April 23, 1974, in connection with the second absence.

The EEOC advised our TCD that it would recredit 5 hours of annual leave to Mr. Jaffe's account and forward the credit to his present employer, the Department of Labor. However, the EEOC stated that Mr. Jaffe did not appeal the AWOL charges. Accordingly, our TCD accepted the statement of facts of the employing agency. Mr. Jaffe contests the action concerning the AWOL charges and has submitted additional material which he alleges shows that the charges were unjustified.

B-183723

In the present case there is a dispute as to the facts. The EEOC states that Mr. Jaffe was charged AWOL on two occasions and did not appeal the charges. Mr. Jaffe has contested the EEOC account. When disputed questions of fact arise between a claimant and a Government agency, it has long been the practice of our Office to accept the statements of facts furnished by the agency in the absence of a preponderance of evidence to the contrary. B-171969, August 8, 1974; B-180138, May 2, 1974; 40 Comp. Gen. 178, 180 (1960); and 16 id. 1105, 1106 (1937).

In the instant case Mr. Jaffe has submitted evidence indicating he performed official duty during the times he was charged AWOL. However, Mr. Jaffe's contrary evidence is far from substantial or conclusive. Moreover, while Mr. Jaffe indicates he protested the AWOL charges, he has not presented any evidence that he submitted a proper grievance under the Civil Service Regulations of 5 C.F.R., Part 771 (1974). In this connection we point out that our Office has no authority for inquiring into personnel grievance matters, which are properly within the purview of the employing agency. Also, there is no evidence indicating that Mr. Jaffe filed a timely appeal under the Back Pay Act, 5 U.S.C. § 5596 (1970), and the implementing Civil Service Regulations in 5 C.F.R. § 550.801 et seq. (1974), which are applicable in cases involving alleged unjustified or unwarranted personnel actions. Therefore, we are obliged to accept the statement of facts furnished by the EEOC.

Accordingly, the action of our TCD is sustained.

R. F. KELLER

Acting Comptroller General
of the United States