

DOCUMENT RESUME

02592 - [A1852891]

[Waiver of Overpayment from Unearned Annual Leave]. B-188181.
June 24, 1977. 4 pp.

Decision re: John J. Mc Cann; by Robert P. Keller, Deputy
Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation
(305).

Contact: Office of the General Counsel: Civilian Personnel.

Budget Function: General Government: Central Personnel
Management (805).

Organization Concerned: Department of the Navy.

Congressional Relevance: Rep. Joshua Eilberg.

Authority: 5 U.S.C. 5584(b). 5 U.S.C. 6603. B-186802 (1976).
B-174254 (1971). B-174059 (1971).

Rep. Joshua Eilberg requested reconsideration of
decision denying waiver of overpayment to a Navy employee who
was erroneously credited with unearned annual leave for more
than 10 years, which he used and was thereby overpaid \$1,771.13.
Indebtedness may not be waived, even though employee several
times brought matter to attention of payroll department. This
notification did not relieve him of fault. (Author/DJM)

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DECISION



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

*Riesler
Civ. Per.*

FILE: B-188181

DATE: June 24, 1977

**MATTER OF: John J. McCann - Waiver of Overpayment,
Unearned Annual Leave**

DIGEST: Employee who knew that he was being erroneously credited with annual leave in excess of the amount to which he was entitled for a period of more than 10 years and who used this unearned leave may not be granted waiver of the resulting indebtedness under 5 U. S. C. § 5584 since it cannot be said he is without fault, even though he may have brought the error to the attention of his administrative office on several occasions and may have been told it was being or had been taken care of.

By letter dated December 27, 1976, Congressman Joshua Eilberg requested reconsideration of the action of our Claims Division, DWZ-2608966-081, August 2, 1976, denying the waiver of the indebtedness of John J. McCann, resulting from his using unearned annual leave credited to his account in error. The Congressman's letter indicates that payment of this debt will be a great hardship to his constituent since he is now retired on a small annuity.

Mr. McCann was an employee of the Department of the Navy. As a result of an administrative error in his service computation date, he was credited with annual leave at an accrual rate of 8 hours per biweekly pay period, instead of 6 hours to which he was entitled under the provisions of 5 U. S. C. § 6303, from August 30, 1964, until the error was discovered on March 14, 1975. During the intervening leave years 1963 through 1974 he used 388 hours of the unearned annual leave which was erroneously credited to his account and was consequently overpaid in the amount of \$1,771.13.

Mr. McCann was informed of the error and the resulting overpayment to him on April 11, 1975, and, by his attorney's letter of April 18, 1975, he requested that his indebtedness be waived. His affidavit in support of his request reads in pertinent part as follows:

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"I was aware ten years ago that I was being overpaid on my annual leave, because instead of getting six hours of pay, I was getting eight hours of pay. In fact, in 1964, I told Margaret Pankovich about the problem. She was in charge of the annual leave time in the Comptroller's office at the Naval Air Propulsion Center. I said that I was getting more annual leave than I should, and she said: 'John, we will take care of it'.

"But the overpayment of annual leave kept coming. Instead of getting six hours, I was getting eight hours. I assumed that she knew what she was doing.

"In 1968, I checked it again. I again went to see Margaret Pankovich, and again inquired as to why I was getting eight hours rather than six hours. Again, she said: 'John, I will take care of it'.

"But it kept coming. I was still getting eight hours instead of six.

"In about 1970, I returned again and asked her why this was occurring, and she said that she had taken care of it, and that everything was straightened out and, therefore, I assumed everything was alright, and did not question it thereafter."

Mr. McCann submitted a letter from another employee supporting his contention that he visited his payroll office on several occasions to resolve his leave problem. The agency can neither corroborate or refute this since Miss Pankovich, the Payroll Supervisor alleged to have been contacted, has since died. However, the official who was her immediate supervisor and personally observed her "performance and integrity" over many years is of the opinion that she would have taken corrective action promptly if she had been aware of the error.

The waiver of erroneous payment of pay is governed by section 5584 of title 5, United States Code, which provides in pertinent part as follows:

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"(a) A claim of the United States against a person arising out of an erroneous payment of pay * * * to an employee of an agency, the collection of which would be against equity and good conscience and not in the best interests of the United States, may be waived in whole or in part by--

"(1) the Comptroller General of the United States * * *.

* * * * *

"(b) The Comptroller General * * * may not exercise his authority under this section to waive any claim--

"(1) if, in his opinion, there exists, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim * * *."

By his own admission Mr. McCann knew in 1964 that he had been placed in the wrong annual leave-earning category and that he was being credited with leave to which he was not legally entitled throughout the period involved, yet he deliberately used this unearned leave. He justifies his actions on the grounds that he brought the matter to the attention of his administrative office in 1964, 1968, and 1970, and that he relied on assurances that the error would be and, in the last instance, had been corrected. This was not sufficient, in our view, to relieve him of fault in the matter, particularly since he began using the unearned leave in 1968, well before 1970 when he says he was told the error had been corrected, and since he was aware that in fact it was not corrected even then because he continued to be credited with leave at the improper higher rate. See Matter of Robert L. Fondren, B-186802, November 30, 1976; B-174254, November 22, 1971; B-174059, October 8, 1971.

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Subsection (b) of section 5584, previously quoted, explicitly prohibits the waiver of erroneous payments of pay if there is any indication of fault on the part of the employee. Therefore, the prior denial of Mr. McCann's request for waiver by our Claims Division must be sustained.


Deputy Comptroller General
of the United States