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**DECISION**



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

**FILE:** B-191210

**DATE:** July 21, 1978

**MATTER OF:** Charles R. Steed - Payment for Annual Leave

- DIGEST:**
1. Employee resigned November 10, 1973, and forfeited 107 hours of annual leave pursuant to 5 U.S.C. 5551(a) (1970). Since the record shows the parties did not intend a forfeiture to occur, and it was the agency's policy to avoid forfeiture in such circumstances, the employee may be restored to the rolls for the period of the unused annual leave. See Comp. Gen. decs. cited.
  2. The administrative error provisions of Public Law No. 93-181, December 14, 1973, codified at 5 U.S.C. 6304, do not apply to leave forfeited pursuant to 5 U.S.C. 5551(a). B-182608, February 27, 1975.

This action is in response to a request dated August 5, 1977, from Mr. George B. Fineberg, an authorized certifying officer of the Federal Aviation Administration (FAA), for a decision regarding the claim of Mr. Charles R. Steed for payment for 107 hours of annual leave forfeited upon his retirement from that agency on November 10, 1973.

In the spring of 1973 Mr. Steed informed his superiors of his intention to retire from his position as General Aviation Operations Inspector, FAA. He had accumulated leave in excess of 240 hours and advised agency officials that since the agency was short of inspectors, he would be willing to work up to his retirement date if he could get paid for all of his annual leave. He was told that he could probably be paid for all his accumulated leave, but that the agency would check on it to be certain. On July 31, 1973, Mr. Steed asked the District Personnel Office to type his resignation letter. The letter stated his intention to resign effecting the pay period ending November 10, 1973, and with respect to his accumulated leave, stated that:

"It is understood that my service will end this date, and my unused annual leave will be paid in a lump sum."


B-191210

It is clear from the record that none of the officials with whom Mr. Steed discussed his retirement actually checked on his leave balance, and no one advised him that, under the law then in effect, he could not receive a lump-sum payment for leave in excess of 240 hours. Compare 5 U.S.C. 5551(a) (1970). Accordingly, Mr. Steed continued to work up to the date of his retirement, and did not use the leave he had accumulated in excess of 240 hours. The misunderstanding did not become evident until after his retirement, when he was advised that he could be paid for only 240 hours, and had forfeited 107 hours of annual leave.

The agency states that it was their policy to permit employees to use all leave in excess of 240 hours prior to resignation or retirement, so as to avoid forfeiture. Further, the record is clear that neither the agency nor Mr. Steed intended his retirement to result in the forfeiture of annual leave. As a general rule, when an authorized separation becomes an accomplished fact, it may not be rescinded or set aside. 32 Comp. Gen. 111 (1952). However, we have recognized exceptions to this rule where the separation was not in conformance with established agency practice, applicable regulations, or the intent of the parties. B-182027, December 23, 1974; B-177057, January 23, 1973; and B-173632, August 3, 1971. Under such circumstances we have permitted employees to be restored to the rolls for the period of the unused annual leave.

Since the parties did not intend that a forfeiture occur in this case, and because agency policy was to avoid forfeiture, Mr. Steed may be restored to the rolls for the period of his unused annual leave. Advice of such a change should be forwarded to the Civil Service Commission for corresponding adjustment in his retirement account.

We note that the agency refers to Public Law No. 93-181, passed December 14, 1973, and asks that consideration be given to allowing Mr. Steed's claim under its provisions. However, since the leave in this case was forfeited pursuant to 5 U.S.C. 5551(a) (1970), the administrative error provisions of that law, now codified at 5 U.S.C. 6304 (1976), do not apply. See B-182608, February 27, 1975, copy enclosed.

  
Deputy Comptroller General  
of the United States