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DECISION



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

FILE: B-198567 *Request For* DATE: July 22, 1980
MATTER OF: Rosie J. Shivers - Waiver of Overpayments of Pay
Under 5 U.S.C. § 8118

DIGEST: Claim of Government against employee for overpayments of continuation-of-pay payments under 5 U.S.C. § 8118 resulted from denial by Office of Workers' Compensation Programs of her claim for work related injury. That part of overpayments which could not be offset by charges against employee's leave was waived. Waiver action was proper since it was determined that employee's claim was made in good faith and offset against employee's outstanding leave balances was made pursuant to requirement to consider interest of Government as well as that of employee.

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Ms. Rosie J. Shivers requests reconsideration of the action taken by our Claims Division on January 15, 1980, granting only partial waiver of the Government's claim of \$545.22 against her for an overpayment of pay. The overpayment resulted from a determination by the Office of Workers' Compensation Programs (OWCP), Department of Labor, that she was not entitled to the continuation-of-pay she had received from October 26 through November 15, 1976, after she had filed a claim for an injury incurred while employed at the Library of Congress. In view of the applicable provisions of law and regulation we sustain the Claims Division action.

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Ms. Shivers was granted a continuation-of-pay from January 22 through February 24, 1976, under the provisions of 5 U.S.C. § 8118 (1976) when she filed a claim for a work-related injury. Later, on October 26, 1976, Ms. Shivers' supervisor completed the necessary form on Ms. Shivers' behalf in order to notify the OWCP that Ms. Shivers had sustained a recurrent injury on October 26 and to request continuation-of-pay. Ms. Shivers' agency paid her for the period of October 26 through November 15, 1976, a total of \$545.22. On February 23, 1977, the OWCP denied her claim and, therefore, she was not entitled to the continuation-of-pay she had received for the subject period.

Our Claims Division found that since Ms. Shivers made her claim in good faith and reasonably could have believed that her medical condition had resulted from an injury which would qualify her for

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continuation-of-pay, the requirements for waiver under 5 U.S.C. § 5584 (1976) had been met. However, the Claims Division further found that since Ms. Shivers had a total of 70 hours of annual and sick leave available, which could be used to offset a portion of the claim, waiver of the \$326.20 value of such leave should be denied. Ms. Shivers requests reconsideration of the denial of waiver of that amount.

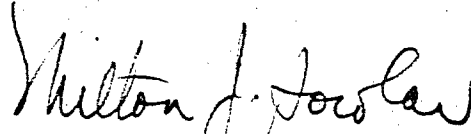
Sections 8118(a) and (b) of title 5, United States Code, authorize the continuation-of-pay of an employee for a period not to exceed 45 days when he has filed a claim for a period of wage loss due to a traumatic injury. Section 8118(d) provides that if the claim is denied, the continuation-of-pay payments shall, at the option of the employee, be charged to annual or sick leave or shall be deemed overpayments of pay within the meaning of 5 U.S.C. § 5584 (1976). Section 5584 provides that a claim of the United States arising out of an overpayment of pay may be waived in whole or part when collection would be against equity and good conscience and not in the best interests of the United States.

In view of the above, when an employee's claim for compensation for a work-related injury is denied, the employee may request waiver of the overpayments. However, in determining whether waiver should be granted, the interest of the Government, as well as that of the employee, must be considered. In this connection the amount of leave an employee has available for use may be a significant factor in any decision on whether and to what extent to grant waiver. To the extent an employee has leave which may be applied to offset the claim, waiver of a continuation-of-pay overpayment would generally not be in the best interest of the Government.

In the instant case, the Claims Division determined that Ms. Shivers met the conditions for waiver because she made her claim in good faith and reasonably could have believed that her medical condition had resulted from an injury which would qualify her for continuation-of-pay. However, it also determined that since Ms. Shivers had 34 hours of annual leave and 36 hours of sick leave available, it would not be against equity and good conscience nor contrary to the best interest of the United States not to waive \$326.20, which represented the value of the leave. Therefore, it waived only \$219.02, the amount of overpayments which could not be offset against the leave available to Ms. Shivers. We believe these determinations properly took into consideration the interest of Ms. Shivers as well as that of the Government.

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Accordingly, we sustain the action taken by our Claims Division in granting waiver of the Government's \$545.22 claim against Ms. Shivers in the partial amount of \$219.02, but denying waiver as to the balance of \$326.20.

A handwritten signature in cursive script, reading "Milton J. Fowler".

For the Comptroller General
of the United States