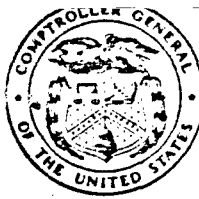


DECISION



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

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FILE: B-200855

DATE: March 26, 1981

MATTER OF: J. Paul Guedet - [Restoration of forfeited
annual leave]

DIGEST: Employee's annual leave ceiling was not adjusted on his Statement of Earnings and Leave when it was reduced after he returned to the United States from an overseas duty post. Absent agency regulation requiring annual leave ceilings to be included on earnings statements or requiring annual leave ceilings to be adjusted immediately upon departure from overseas post, the failure to show the correct annual leave ceiling does not constitute administrative error providing basis for restoration of leave under 5 U.S.C. § 6304(d)(1)(A).

By letter dated September 19, 1980, Mr. J. Paul Guedet has requested reconsideration of our Claims Group's determination of March 28, 1980, that he is not entitled to restoration of annual leave under 5 U.S.C. § 6304(d) (1976). In sustaining the adjudication of our Claims Group we will review Mr. Guedet's reasserted contention that an administrative error caused him to forfeit the annual leave.

The facts giving rise to Mr. Guedet's claim are not in dispute and are briefly recounted as follows. As an employee of the Agency for International Development, Mr. Guedet was assigned to the United States for long-term training from an overseas duty-post in 1975. In connection with this assignment, Mr. Guedet's annual leave ceiling shown on his Statement of Earnings and Leave was not adjusted by the agency to reflect the lower ceiling applicable to employees assigned to duty in the United States. Compare §§ 6304(a) and 6304(b) of title 5, United States Code. Following an agency audit, however, 82 hours of annual leave were treated as forfeited and deducted from his leave balance. Mr. Guedet claimed that the 82 hours should be restored because the incorrect ceiling shown on his statement was an administrative error and he did not have an opportunity to use the leave due to an exigency of the public business.

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Forfeited annual leave can be restored under the limited circumstances set out in 5 U.S.C. § 6304(d)(1), which provides:

"Annual leave which is lost by operation of this section because of--

"(A) administrative error when the error causes a loss of annual leave otherwise accruable after June 30, 1960;

"(B) exigencies of the public business when the annual leave was scheduled in advance; or--

"(C) sickness of the employee when the annual leave was scheduled in advance; shall be restored to the employee."

For restoration under subsections (B) or (C), there is a statutory requirement that the annual leave be scheduled in advance. See also 5 C.F.R. § 630.308, and the comprehensive discussion of this requirement contained in Arthur E. Quillo, B-194545, June 15, 1979, (reconsidered and affirmed B-194545, April 28, 1980). As a result, since Mr. Guedet did not schedule his annual leave in advance, and since the statutory scheduling requirement may not be waived or modified even where extenuating circumstances exist, his forfeited leave may not be restored as an "exigency of the public business."

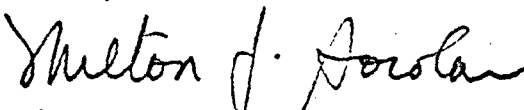
Turning to subsection (A), we have stated that what constitutes an administrative error under 5 U.S.C. § 6304(d)(1)(A) in a particular case is a matter for which primary jurisdiction lies with the agency involved. John J. Lynch, 55 Comp. Gen. 784 (1976). Decisions of our Office have construed an administrative error as the failure of an agency to carry out written administrative regulations having mandatory effect for the purpose of correcting erroneous pay rates, etc. 55 id. at 785, and decisions cited therein. Thus, for example, failure, on the part of the agency to properly schedule requested leave constitutes an administrative

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error, which is itself a basis for restoration of forfeited leave under 5 U.S.C. § 6304(d)(1)(A). See William D. Norsworth 57 Comp. Gen. 325 (1978). In general, however, an agency's mere failure to advise an employee of the scheduling requirement of 5 U.S.C. § 6304(d)(1)(B) does not constitute administrative error under subsection (A) or otherwise warrant restoration of leave. Michael Dana, et al., 56 Comp. Gen. 470 (1977).

Our review of all the materials submitted in the present case indicates that there are no agency regulations requiring that leave ceilings be shown on the earnings statement or that leave ceilings be adjusted immediately after an employee's departure from an overseas post. Also, there are no regulations requiring counseling an employee when he returns from an overseas post. Accordingly, we do not find that an administrative error has been committed if an agency undertakes to furnish a service or information to its employees which is not required in their regulations and a mistake is made or inaccurate information has been given to the detriment of the employee. See generally and compare Laurence H. Holmes, B-195562, June 6, 1980.

Since we are unable to find that Mr. Guedet is entitled to restoration of leave on the basis of administrative error under 5 U.S.C. §6304(d)(1)(A) or under the public exigency provisions of subsection (d)(1)(B), we are sustaining the adjudication of our Claims Group.


Acting Comptroller General
of the United States