

DECISION

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

FILE: B-209958

DATE: March 2, 1983

MATTER OF: Restoration of Forfeited Annual Leave

DIGEST:

1. Employee who forfeits scheduled annual leave because he cannot use it while suspended from his position due to an indictment may not have the forfeited leave restored on the basis of exigency of the public business. Restoration of annual leave lost due to an exigency was meant to encompass situations where the employee could not take the leave because he was needed on the job.
2. Since forfeiture of annual leave resulted because employee could not use the time, and not because supervisors assured the employee that he would not lose it, leave may not be restored on the basis of administrative error.

This decision responds to an appeal by a former employee of the Internal Revenue Service (IRS), of our Claims Group's settlement dated November 1, 1982 (Z-2844291), which denied his request for restoration of and lump-sum payment for 92 hours of forfeited annual leave.

At issue is whether an employee who forfeits annual leave which he cannot use because he is suspended from duty while under indictment may have such leave restored to him and receive payment for the lost hours. For the reasons which follow, we affirm our Claims Group's settlement denying restoration of the forfeited hours.

In October of 1981 an employee of the IRS was indicted for falsifying IRS documents. At that time the employee had 92 hours of accumulated annual leave which would be forfeited if not used before January 1982. He requested and

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received approval to use these hours in November and December 1981. However, because the employee was suspended from duty on November 4th, and remained in a non-pay, non-duty status until he resigned in April 1982, he could not use these hours. The leave, therefore, was forfeited in accordance with the applicable statute and regulations. See 5 U.S.C. § 6304(a) (Supp. IV 1980).

The request of the employee to the IRS for restoration of and lump-sum payment for the lost hours was denied. The GAO Claims Group affirmed this determination. Employee in his appeal contends that the circumstances which resulted in the forfeiture of his leave warrant special consideration. He says he was told by his supervisors that, if there were indictments, his earned annual leave would not be jeopardized, and he put confidence in this. He alleges that this constitutes administrative error.

With one exception not applicable here, a Federal employee may accumulate and carry into a succeeding leave year a maximum of 30 days of annual leave. 5 U.S.C. § 6304(a) (Supp. IV 1980); Federal Personnel Manual (FPM) Supp. 990-1, chapter 63, § 6304(a) (October 5, 1981). Accumulated leave hours which are in excess of the permissible maximum and which are not used before the end of a leave year are forfeited. Where, however, a forfeiture of annual leave is caused by an exigency of the public business or an administrative error, the lost hours may be restored to the employee. 5 U.S.C. § 6304(d)(1)(A) & (B); FPM Supp. 990-1, chapter 63 § 6304(d)(1)(A) & (B); Internal Revenue Manual § 326.3(1)(a) & (b) (1978). The facts show that, in the present case, the employee's leave was not forfeited for either of these reasons. We, therefore, affirm the settlement of our Claims Group which denied him restoration of the lost hours.

In B-197957, July 24, 1980, two IRS employees were suspended from service after being indicted on bribery charges. As a result they forfeited annual leave which could not be used during this non-pay, non-duty status. The employees alleged that the forfeiture resulted from an exigency of the public business and that the lost hours should

be restored. In denying the claims, this Office pointed out that the section and regulations which permit the restoration of annual leave which is lost due to an exigency of the public business was meant to encompass situations where an employee could not take scheduled annual leave because he was needed on the job. We concluded that annual leave which was lost since it could not be taken because the employee was suspended does not meet this criteria and, therefore, could not be restored.

The present facts show that this employee's claim falls precisely within the ruling enunciated in B-197957, supra, since he also lost his leave because he could not use it due to a suspension which followed an indictment on criminal charges. Accordingly, the Claims Group correctly concluded that the employee's claim could not be granted on this ground.

It also has not been shown that in this case the forfeiture of annual leave resulted from an administrative error. See 5 U.S.C. § 6304(d)(1)(A). In this regard, the employee contends that IRS supervisory personnel assured him that he would not lose his accumulated leave. Even if this could be considered an administrative error, the employee's claim is without merit. Under this provision, forfeited annual leave only may be restored if it is shown that the forfeiture resulted from the administrative error. See William D. Norsworthy, 57 Comp. Gen. 325 (1978); Gerard W. Caprio, B-190263, July 5, 1978. Here, however, it was not an administrative error which caused the annual leave to be forfeited. Rather, the loss resulted because the employee could not use the leave while he was in a non-pay, non-duty status. Therefore, his claim also must be denied under this section.

Employee has not shown that the facts surrounding the forfeiture of his annual leave fall within the statutory and regulatory provisions which permit restoration of such

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leave. In the absence of such a showing, this agency has no authority to grant the relief sought in an individual case. Accordingly, the employee's claim is denied.

MILTON J. SOCOLAR
For Comptroller General
of the United States