



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Frank J. Delano - Improper Lump-sum Leave
Payment - Waiver Consideration

File: B-224052

Date: May 11, 1987

DIGEST

An employee, a Personnel Management Specialist, resigned his competitive status position with his agency and accepted an excepted position in another agency without a break in service. He prepared his own SF-52, Request for Personnel Action, noting that lump-sum payment for annual leave was not to be made. Due to an error by the agency's personnel office, he received the lump-sum payment for his annual leave, and he seeks waiver of this erroneous overpayment. The employee's resignation and subsequent reemployment without a separation for one or more workdays does not authorize lump-sum payment of annual leave under 5 U.S.C. § 5551(a) (1982). The overpayment may not be waived under 5 U.S.C. § 5584, since the employee was not without fault in the matter.

DECISION

This decision is in response to a request from an Authorized Certifying Officer, National Park Service, Department of the Interior. It concerns the claim of Mr. Frank J. Delano for waiver of his indebtedness to the United States, which arose from an improper payment of lump-sum annual leave. We conclude that repayment is required and waiver is inappropriate, for the following reasons.

BACKGROUND

Mr. Delano was employed as a Personnel Management Specialist by the National Park Service, Grand Canyon National Park. Effective Saturday, June 8, 1985, he resigned from that position, and he was employed by the Navajo and Hopi Indian Relocation Commission, Flagstaff, Arizona, effective Monday, June 10, 1985. Although transfers between Federal agencies are normally accomplished without requiring the employee to officially resign from the old agency, Mr. Delano resigned because, as he states in his letter, his new position was in the Excepted Service and he had to

relinquish his competitive status in order to accomplish his transfer. Mr. Delano prepared his own SF-52, Request for Personnel Action, on which he specifically requested that lump-sum leave not be paid.

Notwithstanding that specific request, the Regional Personnel Office for the National Park Service improperly authorized lump-sum leave payment of his annual leave in the amount of \$3,310.23, which represented 231 hours of annual leave. The agency later billed Mr. Delano for the full amount of the lump-sum leave payment, and he seeks waiver of that overpayment. He asserts simply that the error was wholly that of the National Park Service, not his, and that collection is not in the best interests of the United States. He argues that since the time of his lump-sum payment, his salary has significantly increased and that any subsequent lump-sum payment by the Government would result in higher costs to the Government. In addition, he argues that restoration of 231 hours of annual leave would result in a forfeiture of leave in excess of the 240-hour ceiling at the end of the leave year.

RULING

Section 5551 of title 5, United States Code (1982), provides that an employee is entitled to a lump-sum payment for all of his accumulated and currently accrued annual leave remaining to his credit upon separation from Federal service. However, if that individual is reemployed by a Federal agency under the same leave system before the end of the projected period covered by the lump-sum payment, the employee is required to refund to the employing agency an amount equal to the pay covering the period between the date of reemployment and the end of the lump-sum period. 5 U.S.C. § 6306(a) (1982). The leave represented by the refund shall be recredited to the employee's account. 5 U.S.C. § 6306(b) (1982).

We have been informed that the Navajo and Hopi Indian Relocation Commission has the same leave system as the National Park Service. Furthermore, it appears that Mr. Delano's actions did not result in a separation from Government service for one or more workdays but rather was intended to be a resignation from one agency and reemployment in another agency the following workday. Therefore, a lump-sum leave payment is not permitted under those circumstances. Willie W. Louie, 59 Comp. Gen. 335 (1980).

With regard to the issue of waiver under the provisions of 5 U.S.C. § 5584, the Comptroller General may waive recovery

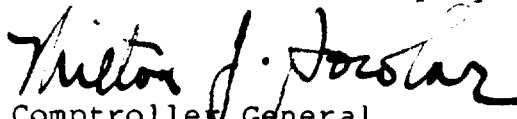
of debts arising out of erroneous payments of pay and allowances to Federal employees. However, waiver is precluded if in the opinion of the Comptroller General:

" * * * there exists, in connection with the claim, an indication of * * * fault, * * * on the part of the employee * * *." 5 U.S.C. § 5584(b)(1).

Mr. Delano asserts that payment was made due to administrative error and that he did not contribute to that error. That is not the basis upon which waiver determinations are predicated. The word "fault" as used in 5 U.S.C. § 5584 has been interpreted as including something more than a proven overt act or omission by an employee. Fault is considered to exist if, in the light of all the facts and circumstances, it is determined that an employee exercising reasonable diligence should have known that an error was made and taken action to have it corrected. The standard employed by this Office is to determine whether a reasonable person should have been aware that he was receiving a payment to which he was not entitled. George R. Beecherl, B-192485, November 17, 1978.

In the present case, Mr. Delano, a Personnel Management Specialist, prepared his own personnel request forms and specifically stated on the form "DO NOT PAY LUMP SUM." Clearly, he knew that he was not entitled to a lump-sum payment for annual leave at that time. When he thereafter received the payment, he should have known that an error had been made and should have brought the matter to the attention of the proper authorities and sought correction of the error. It is our view, therefore, that Mr. Delano was not without fault and that it would not be against equity and good conscience nor contrary to the best interest of the United States to require him to repay the amount.

With regard to the restoration of the 231 hours of annual leave and possible forfeiture of annual leave, we have ruled that forfeiture due to the failure to recredit leave at the time of appointment constitutes forfeiture as a result of administrative error under 5 U.S.C. § 6304(d)(1)(A) (1982). Louie, cited above. Such forfeited annual leave would be restored to the employee for use not later than the end of the leave year ending 2 years after the date the annual leave is restored to the employee. 5 C.F.R. § 630.306 (1986).


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