



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Monideep K. De - Annual Leave - Retroactive  
Substitution for Leave Without Pay Previously  
Charged

File: B-229433

Date: August 25, 1988

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### DIGEST

An employee who received advance credit of annual leave as a temporary employee used all that leave and was placed in a leave-without-pay (LWOP) status to cover the remainder of his absence. When he was later appointed to a permanent position during the same leave year and received advance crediting of additional annual leave, he requested it be retroactively substituted for part of the LWOP period previously charged. The request is denied. The prior period of LWOP was properly charged because the employee did not have sufficient leave to cover his absence. Since the entitlement to additional advance annual leave arose only because of his new employment status, it may not be retroactively substituted for any period prior to the first date it became available for his use.

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### DECISION

This decision is in response to a request from the Director, Division of Accounting and Finance, United States Nuclear Regulatory Commission (NRC). It concerns the entitlement of an NRC employee to retroactively substitute annual leave for a period of approved leave without pay (LWOP). We conclude that the employee may not do so, for the following reasons.

### BACKGROUND

Dr. Monideep K. De was initially appointed by NRC to a 2-year full-time temporary position to expire on May 19, 1987. That full-time temporary appointment was extended for 3 months effective May 20, 1987. Dr. De was appointed to a full-time permanent position effective August 16, 1987.

The NRC policy regarding the crediting of annual leave is different than that followed by most other agencies. The NRC makes available to its employees, temporary and

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permanent, all the annual leave that each employee could earn in the leave year at the beginning of that leave year or from the date of their entry onto duty. However, as that policy relates to a full-time temporary employee, the advancement of annual leave for the year in which his appointment expires is treated differently. Since it is not known at the beginning of that leave year whether a temporary appointment will be renewed, extended, or converted to a permanent employment status, the employee only receives advance credit for annual leave which is equal to the number of whole biweekly pay periods remaining in their term of service.

Dr. De had a zero annual leave balance at the end of the 1986 leave year (January 3, 1987). At the beginning of the 1987 leave year he was advanced 36 hours of annual leave which he would accrue prior to the expiration of his temporary appointment. When his full-time temporary appointment was extended effective May 20, 1987, he was advanced an additional 28 hours. The total number of annual leave hours credited to him as a full-time temporary employee during the 1987 leave year was 64 hours.

On June 11, 1987, while still serving under a temporary appointment, Dr. De requested annual leave during the period June 11 to July 2, 1987, in order to travel to India to attend his mother's funeral. Since he had previously used 15 annual leave hours, his available annual leave balance was only 49 hours. He was granted permission to take leave; however, since he did not have sufficient annual leave to cover all 99 hours of his absence, 50 hours were charged as LWOP.

On August 16, 1987, approximately 6 weeks after his return, he was appointed to a full-time permanent position. Under NRC policy, he was advanced 40 hours of annual leave which represented the leave which would accrue to him during the remainder of the 1987 leave year. Dr. De then requested that these 40 annual leave hours be substituted for 40 of the hours of LWOP previously assessed him. His basic argument was that this annual leave became available to him in the same leave year. The NRC's position is that temporary employment and permanent employment are deemed separate employment statuses under their system. Since Dr. De used all of the annual leave which had been advanced to him as a temporary employee, such additional time away from his official duties then could only be covered by him being placed in an LWOP status. It is also their view that

the subsequent permanent employment initiated a new annual leave entitlement. Since additional annual leave could not accrue to him before August 16, 1987, such leave as was advanced on that date could not be used for any period prior to that date. We concur.

#### RULING

The granting of annual leave, including advance annual leave, is governed by 5 U.S.C. § 6302 (1982). Subsection (d) thereof, provides that:

"(d) The annual leave provided by this subchapter, including annual leave that will accrue to an employee during the year, may be granted at any time during the year as the head of the agency concerned may prescribe."


The regulations issued by the Office of Personnel Management regarding annual leave and contained in Federal Personnel Manual Supplement 990-2, Book 630, subchapter S3-4(4) provide:

"(4) Advancing annual leave. Annual leave which will be earned during the leave year may be credited to an employee's leave account at the beginning of the leave year. When it is so credited, it is available for use during the year . . . ."

Under the plain language of the law and regulations, heads of executive agencies and departments have discretionary authority to establish the manner in which annual leave may be credited to an employee's account. So long as that agency practice, once established, is consistently applied, this Office would have no basis to challenge the validity of agency determinations in this matter. See Margaret E. Thorpe, B-187171, June 7, 1977.

We have held that annual leave may not be substituted retroactively for any part of a period of LWOP, absent a mistake of law or fact in the charging of LWOP, since to do so would increase the employee's right to compensation during the prior period. B-180870, Aug. 27, 1974; Brenda T. Williams, B-184773, Sept. 23, 1976; and John L. Swigert, Jr., B-191713, May 22, 1978.

It is our view that the 40 hours of annual leave to which Dr. De was entitled to be credited effective August 16, 1987, was only available for his use beginning that date and may not be substituted retroactively for a prior period of LWOP.

*for*   
Comptroller General  
of the United States