



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: John P. Maille - Failure to Complete Year of Service - Relocation Expenses and Improper Leave Status

File: B-238271.2

Date: January 31, 1992

DIGEST

1. An employee left the federal service to accept a position with a local government after completing only 10-1/2 months of service under an agreement to remain in government service for one year incident to receiving relocation benefits or to repay such benefits as required by 5 U.S.C. § 5724(i) (1988). The debt for his relocation benefits is not subject to waiver under 5 U.S.C. § 5584 (1988) because the payment of the benefits was not erroneous when made, but became a debt when he failed to complete the service.

2. An employee in effect abandoned his federal position on the date he began a job with a local government, prior to completing a required year of service incident to a relocation he received from his federal employer. To give the appearance of completing the required year of service, the employee submitted documents purporting to show him on annual leave, sick leave and leave without pay through the end of the required time in service. Pay for sick leave and a holiday he received after abandoning federal employment were erroneous payments subject to collection. Waiver of these payments is denied because the employee has not met the standards for waiver under 5 U.S.C. § 5584 (1988).

DECISION

Mr. John P. Maille, a former employee of the Defense Logistics Agency (DLA), appeals our Claims Group's settlement¹ denying his claims for relief from his indebtedness to the United States arising from his failure to complete the required 1 year of service incident to his transfer to a new duty station. His indebtedness consists of the relocation allowances he received and erroneously authorized pay for sick leave and a holiday for periods

¹Z-2902421, August 29, 1991.

after he ceased federal employment, plus interest. For the reasons stated below, we affirm the Claims Group's settlement.

BACKGROUND

Mr. Maille transferred at government expense from another Department of Defense component in San Antonio, Texas, to a DLA component in Alameda, California. Incident to the transfer, as required by 5 U.S.C. § 5724(i) (1988), Mr. Maille signed an agreement to remain in the government service for at least 12 months, or to repay the relocation expense reimbursements he received. Mr. Maille's transfer was effective October 1, 1984, and therefore, the 1-year service period to which he was obligated did not expire until October 1, 1985. However, in July 1985 he applied for and was accepted for employment with the City of Hayward, California, to begin in August 1985, prior to completion of his 1-year of service with DLA. When Mr. Maille requested exemption from completing the year of service, he was told by responsible DLA officials that the remainder of the service would not be waived. Notwithstanding that advice, on August 18, 1985, Mr. Maille began employment with the City of Hayward. To give the appearance of completing the year of service with DLA, Mr. Maille, although no longer working for DLA, submitted applications for annual leave, sick leave and leave without pay and signed time and attendance sheets showing him in such leave categories through September 30, 1985, and signed his resignation effective October 1, 1985. Mr. Maille alleges that these actions were based on the "advice and consent" of his supervisor,² and that he, Mr. Maille, did not feel anything improper was being done by this.

By letter dated October 25, 1985, to Mr. Maille, DLA demanded repayment of the relocation expenses on the basis that Mr. Maille had not completed the required year of service. Following a formal investigation by the Defense Investigative Service, DLA also disallowed Mr. Maille's use of sick leave during the period after he began employment with the City of Hayward. It is not clear from the record what happened in the interim, but in a May 5, 1988 demand letter, the agency requested repayment of the relocation expenses and for the sick leave and holiday pay (for Labor Day) Mr. Maille received after ceasing work for DLA. Mr. Maille objected, primarily on the ground that his supervisor had consented to and participated in this arrangement. After considering Mr. Maille's objections, the

²The Chief of the Defense Reutilization and Marketing Office, Alameda, the DLA component to which Mr. Maille was assigned.

agency again demanded repayment in a June 3, 1988 letter that also noted that interest would begin accruing on the amount owed from the date of that letter.

ANALYSIS

The statute under which DLA paid Mr. Maille's relocation expenses from San Antonio to Alameda, 5 U.S.C. § 5724(i), specifically requires that such expenses may be paid only after the employee agrees in writing to remain in government service for 12 months after his transfer, "unless separated for reasons beyond his control that are acceptable to the agency concerned." It further provides that if the employee violates the agreement, the money spent by the United States for such expenses "is recoverable from the employee as a debt due the United States."

As is noted above, Mr. Maille signed such an agreement incident to his transfer, and in July 1985 when he accepted the position with the City of Hayward and inquired about being released from the unserved portion of his agreed service with DLA, he was advised that DLA would not release him from the remaining service. The determination whether to release Mr. Maille from his service agreement was a matter within DLA's discretion, and it is not subject to question by us unless there is no reasonable basis for the determination. See Jack L. Henry, 65 Comp. Gen. 657, 659 (1986); and 64 Comp. Gen. 643 (1985). In Mr. Maille's case we see no basis for us to question DLA's determination not to waive the service requirement.

In addition, we find Mr. Maille's actions, with the alleged approval of his supervisor, to remain on the DLA roles while working for the City of Hayward, as not complying with the requirements of his service agreement. In effect, Mr. Maille abandoned his employment with DLA on August 18 when he began work for the City of Hayward, and his resignation should have been effective that date. Clearly his attempt to maintain the appearance of continuing his service with DLA as being on annual leave, sick leave and leave without pay, was improper. While an employee is entitled under 5 U.S.C. § 5551 (1988) to be paid a lump-sum for the accrued annual leave to his credit at the time of separation from employment,³ only in very limited circumstances where the exigencies of the service require it may an agency retain an employee on its roles in a terminal leave status immediately prior to separation when it is known in advance that the employee is to be separated. See

³For this reason the agency has not asserted a claim against Mr. Maille for the pay he received for the annual leave period.

James Isaak, 61 Comp. Gen. 363 (1982).⁴ In the present case there were no exigencies of the service requiring placing Mr. Maille on leave pending his resignation; instead, he was shown in the various leave statuses solely for the purpose of circumventing the requirement that he comply with his agreement to serve the full year or refund the relocation expenses the government had incurred for his transfer.

In addition Mr. Maille's use of sick leave at DLA while working at his new job with the city was patently improper, and it cannot be justified by his supervisor's alleged approval. Federal employees are charged with the knowledge that generally, sick leave may be granted to employees only when they are sick, have a medical appointment, or must care for an immediate family member with a contagious disease. See 5 C.F.R. § 630.401 (1991). Accordingly, we agree with the agency's determination that Mr. Maille was not entitled to be placed on sick leave during the period in question and that the pay he received for such leave was erroneous.

Similarly, we agree with the agency's determination that the pay Mr. Maille received for the Labor Day holiday, which occurred during the period in question, was erroneous since he had effectively abandoned his DLA employment 2 weeks prior to Labor Day.


While we have authority under 5 U.S.C. § 5584 to waive debts arising out of "erroneous" payments of pay and allowances, Mr. Maille's debt for the relocation expenses is not subject to our waiver authority because it did not arise from an erroneous payment. The payment of such expenses was proper when made, and he became indebted for them only because he did not complete the agreed service, and their recoupment is required by 5 U.S.C. § 5724(i), supra. As to Mr. Maille's indebtedness arising out of the erroneous payments for sick leave and the holiday, this does not qualify for waiver because the statute precludes waiver where there is "an indication of fraud, misrepresentation, fault or lack of good faith" on the employee's part. 5 U.S.C. § 5584(b)(1) (1988). In view of the facts discussed above, we do not find Mr. Maille free from such an indication regarding this indebtedness.

⁴One of the purposes of the statute providing for lump-sum annual leave payments upon separation was to end the prior practice of placing employees on terminal leave, with continued credit for service, prior to separation until their annual leave was exhausted. See 24 Comp. Gen. 511 (1945).

Mr. Maille also takes issue with being assessed the full amount of the relocation expenses he received. He argues that, because he did work about 10-1/2 of the 12 months required by the service agreement, he should be liable only for a pro rata share of the relocation expenses he received. However, neither the statute requiring repayment of relocation benefits nor the service agreement allows for partial payment under such circumstances. 5 U.S.C. § 5724(i). See also, Leon C. Shelley, 59 Comp. Gen. 25 (1979), in which we denied relief to a former employee who failed to complete his service agreement by 2 days. Therefore, the agency's assessment against Mr. Maille for the full amount of those expenses is correct.

Further, Mr. Maille argues that he has been charged interest unfairly for the approximately 3 years (1985-1988) the agency took to reassert its claim. However, as noted above, the demand letter sent on June 3, 1988, states that interest would accrue from the date of that letter, not from 1985. Therefore, it appears that Mr. Maille's complaint in this regard is groundless. See also, the Federal Claims Collection Standards at 4 C.F.R. § 102.12 (1991).

Accordingly, for the reasons discussed above, we find no basis for us to grant the relief Mr. Maille seeks.

for 
Comptroller General
of the United States