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Comptroller General
of the United States
Washington, D.C. 20546

Decision

Matter of: Richard A. Roberts
File: B-243724
Date: July 25, 1991

DECISION

Mr. Richard A. Roberts, an intermittent employee of the Department of Veterans Affairs (VA) Medical Center in New Orleans, appeals the denial of his request for waiver of his \$246 debt. The debt resulted from pay he received for working 2 days when, according to the VA, he was in a nonpay status and not at work. For the reasons stated below, we sustain the denial of waiver.

The VA paid Mr. Roberts for working on July 2 and 3, 1986, when, in fact, he was not at his station but was on vacation with his family. He claims, however, that he was using compensatory hours for the 2 days. The VA concluded that Mr. Roberts did not have compensatory time to use and had violated agency regulations by reporting himself at work on his timesheet for the 2 days he took off. After following its procedures for disciplinary action, including offering Mr. Roberts the right to be heard, and after intra-agency appeals, the VA issued Mr. Roberts a letter of counselling and ordered him to repay the \$246 he had been paid for the 2 days.

Mr. Roberts requested waiver of his debt. The VA denied his request and our Claims Group sustained the VA's denial.^{1/} Mr. Roberts appeals the denial.

The threshold question in this case is whether there was an overpayment: Mr. Roberts maintains that he was using compensatory time off on the 2 days in question; however, the agency states that he was not entitled to the days off.

The Medical Center report states that Mr. Roberts was an intermittent employee who was to be paid only for hours actually worked, and his time and attendance report was coded for the 2 days as though he was present for work when he was not. The report notes that the time and attendance reports

^{1/} Settlement Z-2904639-050, Oct. 31, 1990.

used by intermittent employees cannot be coded to record compensatory time.

Mr. Roberts states, however, that the Medical Center department where he worked had a practice of allowing individuals who worked overtime without compensation to take compensatory hours off. To support his position, Mr. Roberts has submitted letters from three of his co-workers who stated that they had been authorized to take compensatory hours in the past.

Intermittent employees may earn overtime compensation for irregular or occasional overtime for which compensatory time may be substituted on the same basis as for regular and part-time employees. See 5 U.S.C. §§ 5542 and 5543 (1988), and Evan J. Kemp, Jr., 59 Comp. Gen. 237 (1980). Thus, while VA apparently had a policy against authorizing compensatory time for employees such as Mr. Roberts, there is no statutory bar to the practice. However since compensatory time takes the place of monetary pay for irregular or occasional overtime, it too is subject to the requirement that the overtime hours be officially ordered and approved. See 5 U.S.C. § 5542(a) and Marion D. Murray, 59 Comp. Gen. 246 (1980).

Even assuming that someone in the department where Mr. Roberts worked did allow employees to accumulate and use compensatory hours, we conclude that Mr. Roberts has not established that he was allowed to do so and that he had accumulated compensatory time which he was then authorized to use to cover his absence on the 2 days in question. That is, he has not shown that he earned compensatory time at the direction and with the approval of a supervisor with authority to officially approve it, nor does the record show that he sought and obtained his supervisor's approval to use compensatory time on the specific dates at issue.^{2/} In the absence of such evidence in this case, we have no basis to overturn the agency's finding that Mr. Roberts received pay for 2 days while in a nonpay status in violation of agency regulations.

As to waiver of the erroneous payment, the authority to waive claims for overpayment of pay applies only if collection would be against equity and good conscience, provided there is no

^{2/} This could be demonstrated despite the inability to code compensatory hours on the time and attendance reports. The types of evidence that we have considered sufficient to document overtime claims include personal daily diaries and certificates from supervisors indicating approval of the overtime. See, for example, Richard F. Briggs, B-215686, Dec. 26, 1984; Donald E. Bordenkircher and Chester C. Jew, B-188089, Oct. 31, 1977; George E. Gilmore, B-188238, May 20, 1977.

indication of fraud, misrepresentation, fault or lack of good faith on the employee's part. 5 U.S.C. § 5584(a) and (b) (1988). The agency denied waiver on the basis that Mr. Roberts was at fault in this matter. On the record present here we cannot disagree with the agency's and our Claims Group's denial of waiver. It is our view that Mr. Roberts must accept at least partial responsibility for receiving pay on the basis that he was present for duty when he was not, and with no record to show that he earned compensatory time and had permission to use it on the days in question. Accordingly, denial of waiver is sustained.



James F. Hinchman
General Counsel