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DECISION

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

FILE: B-192811

DATE: June 5, 1979

MATTER OF: Edward W. Dorcheus - Overpayment of Compensatory Time

DIGEST: Employee, who was erroneously granted compensatory time off in excess of the hours for which he could have received overtime pay under the aggregate salary limitation in 5 U.S.C. § 5547, requests recredit of 47 hours of annual leave which agency charged to recover erroneous payments. Payments for the salary paid for excess compensatory time off must be recovered but is subject to waiver under 5 U.S.C. § 5584 and 4 C.F.R. Part 91. Employee's annual leave balance may be charged for compensatory time erroneously granted only with employee's consent.

AGC 00912

Request
Employee

This decision is in response to a request from the Department of Energy (DOE) concerning the claim of Mr. Edward W. Dorcheus, a DOE employee, for restoration of ~~47 hours of~~ annual leave which was charged by DOE to recoup excess compensatory time off. The issue presented for decision is the method by which an agency may recover hours of compensatory time which have been erroneously granted to and used by the employee.

The report from DOE states that while Mr. Dorcheus was employed at the Federal Energy Administration (an agency which became part of DOE), he was credited with 126 hours of compensatory time between April and June of 1975. The report states further that of these 126 hours of compensatory time, 47 hours were erroneously credited to Mr. Dorcheus since these hours were in excess of the biweekly limitation on premium pay contained in 5 U.S.C. § 5547. Since Mr. Dorcheus had already used all 126 hours of compensatory time, the agency charged the 47 hours to his annual leave account and thereby reduced his personal leave ceiling.

Mr. Dorcheus has requested restoration of the annual leave so as to restore his personal leave ceiling to 350 hours. He states that he was unaware of the limitation on compensatory time, and he argues that he is being further penalized through the reduction in his personal leave ceiling.

Under the provisions of 5 U.S.C. § 5543(a), agencies may grant compensatory time off instead of paying overtime compensation for

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time spent in irregular or occasional overtime work. However, we have long held that such compensatory time is subject to the aggregate salary limitation contained in 5 U.S.C. § 5547. 37 Comp. Gen. 362 (1957); and 26 id. 750 (1947). Under that limitation, employees may be paid premium pay only to the extent that the payment does not cause the employee's aggregate rate of pay for any pay period to exceed the maximum rate for grade GS-15. Also, the hours of compensatory time may not exceed the number of hours for which the employee may receive overtime pay.

In the present case, the agency determined that it had erroneously granted Mr. Dorcheus 47 hours of compensatory time in excess of the aggregate salary limitation, and, citing our decision in 37 Comp. Gen. 362, supra, it charged the excess hours which had already been used by Mr. Dorcheus to his annual leave account. In addition, the agency citing our decision in B-167120, August 4, 1972, denied Mr. Dorcheus' request for waiver of the overpayment of pay since Mr. Dorcheus had sufficient leave to cover the adjustment to his leave account.

In our decision in 37 Comp. Gen. 362, supra, the third question presented to our Office was whether excess compensatory time granted and used would be automatically charged to annual leave. In response, we held that the granting of annual leave is a matter of administrative discretion and that the cancellation of excess compensatory time would not automatically convert the time off on excess compensatory leave to annual leave. 37 id. 362, at 364, supra. See also 45 id. 243 (1965). We find no authority, however, for the agency to charge excess compensatory time off to the employee's annual leave balance without his consent. We believe the proper course of action to recover compensatory time erroneously granted is to recoup the amount paid for the compensatory time. Recovery of the salary paid for the compensatory time erroneously taken may be considered for waiver pursuant to the provisions of 5 U.S.C. § 5584 and 4 C.F.R. Part 91. If waiver is not allowed, the employee's annual leave balance could, with his consent, be reduced by the amount of compensatory time erroneously granted and used.

In the present case, the erroneous crediting of compensatory time to Mr. Dorcheus should be considered for waiver. If the overpayment is waived or, alternatively, if Mr. Dorcheus elects to repay to the Government the amount erroneously paid, the charge to annual leave should be recredited to his leave account and his personal

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leave ceiling should be restored. If Mr. Dorcheus does not agree to repay the amount paid for the compensatory time, such amount may be recovered by means of offset. See 5 U.S.C. § 5514. Our decision in B-176020, supra, which was cited by the agency in denying waiver, was concerned with the improper granting of administrative leave and the agency's action to correct the error by charging the absence to annual leave. This decision has no application to compensatory time off which is a form of compensation for services rendered.

Accordingly, action should be taken on the employee's request consistent with the above discussion, if otherwise proper.



Deputy Comptroller General
of the United States