

DECISION

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

27283

FILE: B-212294**DATE:** January 24, 1984**MATTER OF:** Leonard J. Milewski - Forfeited Annual
Leave - Restoration**DIGEST:**

Employee of the Department of the Army who was absent from work from June 21, 1982, through January 23, 1983, due to work injury, forfeited 47 hours of annual leave in the 1982 leave year. Employees only received annual notices warning them in general to schedule annual leave in advance, and the employee was not specifically notified that in his case he would forfeit the leave if it were not scheduled. Hence, we presume that he would have scheduled leave to avoid forfeiture if he had been properly notified and the 47 hours of leave may be restored.

Lieutenant Colonel D.W. Mikkelson, Finance Corps Executive, Assistant Comptroller for Finance and Accounting, Department of the Army, has requested a decision as to whether Mr. Leonard J. Milewski, a WG-08 electronics worker at the Tobyhanna Army Depot, may have 47 hours of annual leave restored to his leave account. We hold that, although Mr. Milewski did not schedule the use of the 47 hours of annual leave prior to the end of the leave year, since he was sick and absent from work for the latter half of the year, he may be recredited with the 47 hours of leave.

Mr. Milewski was injured while in the performance of his duty and because of this he was absent from work from June 21, 1982 through January 23, 1983. During this period he received worker's compensation under the Federal Employees Compensation Act (5 U.S.C. Chapter 81) for his injury. Mr. Milewski states that he did not schedule the 47 hours of annual leave which exceeded the maximum accrual prior to the end of the 1982 leave year, because he could not have used any excess annual leave while receiving compensation for his injuries. Moreover, he states that he was never informed during that time that if he did not schedule the annual leave he would lose it.

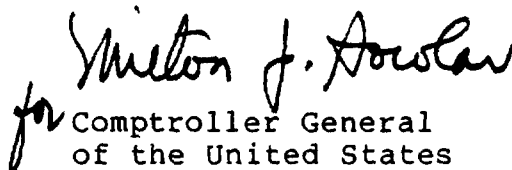
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The Army, in initially denying Mr. Milewski's claim, stated that annual leave that exceeds the maximum limitation must be scheduled in writing in order for it to be restored. The Army denial also stated that since employees were annually reminded by various notices and bulletins that such excess annual leave had to be scheduled in advance, Mr. Milewski must have been on notice of the necessity to schedule his leave, and his failure to do so negated his opportunity to have the forfeited leave restored.

We have held that in cases of prolonged illness preceding the end of a leave year, it would be presumed that if an employee had been properly advised of his annual leave balance he would have requested scheduling in advance of annual leave otherwise subject to forfeiture. Robert T. Good, B-182608, February 19, 1976. We have extended this rationale to worker's compensation cases. Robert W. Lochridge, B-193431, August 8, 1979.

In Mr. Milewski's case the record does not show that he was ever specifically notified that his failure to schedule his annual leave, even though he was unable to work because of injury, would result in his forfeiting the leave. The notices issued annually which warned employees in general to schedule their annual leave in advance would not necessarily alert an employee in Mr. Milewski's position that he should schedule his annual leave to avoid forfeiture. Hence, we presume that he would have scheduled leave to avoid forfeiture if he had been properly notified.

Accordingly, Mr. Milewski's claim for restoration of the forfeited 47 hours of annual leave is granted.


for Comptroller General
of the United States