



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Robert J. Stacklin - Restoration of Annual Leave  
File: B-226927  
Date: September 25, 1987

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### DIGEST

Employee of the Defense Logistics Agency in September 1986 scheduled use of annual leave to avoid forfeiture at end of leave year. In November 1986 employee suffered cardiac trauma resulting in absence from work until January 1987. Because employee was in a sick leave status he forfeited the annual leave in excess of 240 hours. That annual leave was restored by the agency to the employee's account under 5 U.S.C. § 6304(d)(1)(C), with the exception of 8 hours of annual leave scheduled for December 26, 1986, an administratively declared holiday. Those 8 hours of annual leave may be restored, because in cases of prolonged illness preceding the end of a leave year the employee is presumed to have requested proper scheduling of annual leave to avoid forfeiture, and proper scheduling in this case would have avoided forfeiture for December 26.

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### DECISION

Robert J. Stacklin, an employee of the Defense Logistics Agency requests a decision requiring the agency to restore 8 hours of annual leave to his account which was forfeited because it could not be used as a result of a prolonged illness at the end of the 1986 leave year. The agency allowed restoration of scheduled but unused annual leave totalling 81 hours which was forfeited, but disallowed restoration of 8 hours of annual leave covering the legal holiday of December 26, 1986. The 8 hours of forfeited annual leave may be restored to Mr. Stacklin's account under 5 U.S.C. § 6304(d)(1)(C), since in cases of prolonged illness preceding the end of a leave year, the employee is presumed to have requested proper scheduling of annual leave otherwise subject to forfeiture, and the presumption of proper scheduling would not have permitted forfeiture of 8 hours of annual leave for the legal holiday on December 26, 1986.

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Mr. Stacklin States that on September 10, 1986, he revised his annual leave schedule to prevent the forfeiture of any accrued unused annual leave accumulated in his annual leave account above 240 hours at the end of the leave year. On November 12, 1986, Mr. Stacklin suffered cardiac trauma followed by emergency open heart surgery which necessitated his absence from work until January 12, 1987. Upon his return Mr. Stacklin requested that the agency administratively restore 89 hours of annual leave which he was unable to use during the 1986 leave year due to illness. The agency restored only 81 hours of Mr. Stacklin's annual leave, determining that 8 hours of annual leave scheduled for December 26, 1986, could not be restored since that date was declared a holiday and scheduled leave could not be restored in such a case. Mr. Stacklin contends that when December 26, 1986, was administratively made a legal holiday during the period he was on sick leave he had neither the opportunity nor the prerogative to reschedule his annual leave for December 26, 1986, since he was under a doctor's care and absent from work.

#### ANALYSIS AND CONCLUSION

The general rule concerning restoration of annual leave is that leave lost through forfeiture under 5 U.S.C. § 6304 may be restored to the employee if it is lost because of "sickness of the employee when the annual leave was scheduled in advance." 5 U.S.C. § 6304(d)(1)(C). Under 5 C.F.R. § 630.308 the annual leave must have been scheduled in writing before the start of the third bi-weekly pay period prior to the end of the leave year, and this requirement may not be waived or modified even where extenuating circumstances may exist. Michael Dana, et al., 56 Comp. Gen. 470 (1977). Mr. Stacklin's actions in scheduling his annual leave in September 1986 for use before the end of the 1986 leave year complied with this authority, and as a result, the agency restored 81 hours of annual leave which he was unable to use during the 1986 leave year due to his illness. However, the agency cites decisions of this Office as requiring denial of restoration of 8 hours of annual leave for the December 26 holiday because there is no authority to permit the crediting of leave which is forfeited because a legal holiday was granted on the day annual leave was scheduled to be used.

In one decision cited by the agency, Joseph A. Seymour, B-182549, August 22, 1975, we held that where an employee had taken annual leave for 13 days for the balance of the leave year but was charged for only 11 days because two additional holidays were declared during that period, there was no authority to restore the resulting excess annual leave which remained above the statutory limit of 240 hours for carryover into the next leave year and was subject to forfeiture. We determined in Mr. Seymour's case that the forfeited annual leave did not appear within the exemptions of 5 U.S.C. § 6304(d)(1) which allow forfeited leave to be restored to the employee if the forfeited leave resulted from (A) an administrative error, (B) the exigencies of public business when the annual leave was scheduled in advance or (C) sickness of the employee when the annual leave was scheduled in advance. Again in B-207248, May 24, 1982, also referred to by the agency, we advised the president of a local union requesting clarification of the annual leave forfeiture provisions, that there is no authority to permit the crediting or use of excess leave which is forfeited because a day off was granted on the day leave was to have been used unless the forfeited annual leave in such situations comes within the scope of 5 U.S.C. § 6304(d)(1).

We believe that Mr. Stacklin's claim is sufficiently distinguishable from these earlier opinions to permit restoration of the additional 8 hours of annual leave which he claims for December 26, 1986. Unlike the employees involved in our earlier cases who were presumed to have notice and opportunity to schedule annual leave in accordance with 5 U.S.C. § 6304, Mr. Stacklin was totally incapacitated and away from the work setting due to a prolonged illness which negated his opportunity to revise his annual leave schedule to avoid forfeiture of 8 hours of annual leave for the legal holiday of December 26, 1986. 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 he would have requested scheduling in advance of annual leave otherwise subject to forfeiture. See Robert T. Good, B-182608, February 19, 1976.

Mr. Stacklin timely scheduled the use of his annual leave to avoid forfeiture in September 1986, thus complying with the scheduling requirement in 5 C.F.R. § 630.308 (1984). The annual leave in question was his to use for his own purpose and that purpose was prevented by the unanticipated occurrence of his prolonged illness.

Therefore, since in cases of prolonged illness preceding the end of the leave year we presume that the employee would have scheduled leave to avoid forfeiture, Leonard J. Mylewski, 63 Comp. Gen. 180 (1984), it is our view that the designation of December 26, 1986, as a legal holiday during a period when Mr. Stacklin was away from work recuperating during a prolonged period, should not cause a forfeiture of annual leave. Our decisions presume that he would have scheduled his leave to avoid any annual leave forfeiture for December 26, 1986. Since Mr. Stacklin's forfeiture resulted from his prolonged illness when his annual leave had been scheduled in advance, Mr. Stacklin's claim for restoration of 8 hours of forfeited annual leave for that day is allowed under 5 U.S.C. § 6304(d)(1)(C).

*for* *Jerry R. Van Cleave*  
Comptroller General  
of the United States