Botsford

The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Irene L. Marek - Claims for Backpay and Leave Credit--Statute of Limitations

File: B-225967

Date: January 14, 1988

DIGEST

An employee with the Soil Conservation Service who was classified as an intermittent employee from 1966 to 1974 asserts that she should instead have been classified as part-time during that period. However, her claims based on her alleged misclassification between 1966 and 1974 for retroactive holiday pay, additional pay for within-grade increases, and credit for annual and sick leave were not received here until 1986, and consequently they are barred by the 6-year time limit on the filing of claims prescribed by the Barring Act, 31 U.S.C. § 3702(b). Decisions where we have held that a claim for sick leave is not a monetary claim cognizable by the Comptroller General, and subject to the Barring Act, are overruled.

DECISION

A certifying officer with the United States Department of Agriculture's National Finance Center has requested our opinion as to whether Ms. Irene L. Marek is entitled to annual and sick leave, holiday pay, and within-grade increases, based on her claim that she was improperly classified as intermittent rather than part-time while employed with the Soil Conservation Service between 1966 and 1974. We did not receive her claim until 1986, and we therefore conclude that the 6-year time limit on the filing of claims prescribed by the Barring Act of October 9, 1940, as amended and now codified at 31 U.S.C. § 3702(b), prevents any recredit or reimbursement for annual or sick leave, holiday pay, or within-grade increases.

BACKGROUND

Ms. Marek, an intermittent employee with the Soil Conservation Service in Temple, Texas, since 1966 received a

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permanent part-time appointment effective August 18, 1974. Sometime in 1985 Ms. Marek requested that the agency also change her prior service from November 2, 1966, to August 17, 1974, from intermittent to part-time.

The Office of Personnel Mangement (OPM) subsequently advised the agency that it would be permissible to reclassify her as a part-time employee retroactively during that period for civil service retirement purposes. Later, the agency forwarded to our Office her claims for backpay and leave credit based on the alleged misclassification. We first received those claims on December 30, 1986.

OPINION

Under the Barring Act of October 9, 1940, as amended and now codified at section 3702(b) of title 31, United States Code, claims against the United States cognizable by the Comptroller General must be received within 6 years of the date they first accrue in order to be considered on their merits.

Claims cognizable by the Comptroller General are claims for the payment of money which are not within the exclusive jurisdiction of another agency to decide. See 42 Comp. Gen. 337, 339 (1963). Ms. Marek's claims for holiday pay and within-grade increases are clearly claims cognizable by the Comptroller General. As a result, Ms. Marek's claims relating to those items are barred from consideration. On the other hand, since OPM has specific statutory authority under 5 U.S.C. § 8347(b) to adjudicate and settle accounts under the retirement laws, the operation of the Barring Act does not affect OPM's allowance of retirement service credit for the period of time she was classified as an intermittent employee.

As to Ms. Marek's claims for additional leave credit based on her employment between 1966 and 1974, we have specifically held that claims for annual leave are cognizable by the Comptroller General and are, therefore, subject to the Barring Act. See John E. Denton, B-221252, Sept. 19, 1986. In that case we pointed out that although leave earned and credited to a leave account is not immediately convertible to money, annual leave claims are monetary claims since additions to the leave balance are payable in a lump sum upon an employee's separation from federal service. Furthermore, the increased leave balance from hours earned permits the employee's absence from duty for additional hours without deduction of money from salary. Finally, claims for annual leave are not adjudicated solely by

the employing agencies or other federal offices. The Comptroller General has traditionally decided these claims after initial consideration by the employing agency. See, e.g., 62 Comp. Gen. 253 (1983) and 62 Comp. Gen. 545 (1983). As a result, Ms. Marek's claim for annual leave recredit is subject to the Barring Act and may not be considered.

Our position with regard to sick leave has been somewhat less clear. In several cases involving claims for recredit of sick leave we have stated that such claims are not monetary claims and, therefore, are not proper subjects for settlement by our Office. See 58 Comp. Gen. 741, 743 (1979); Ruth L. Jones, B-189288, Nov. 23, 1977; B-171947.36, Nov. 16, 1972; B-171947.24, June 16, 1972. In these cases we have held that the crediting of sick leave is primarily an administrative matter and that the employing agency must determine the acceptability of the evidence presented to support those claims. It appears that in each of these cases, the claims would have been barred by operation of the Barring Act but we did not address that issue. On the other hand we have, on occasion, held that the Barring Act precludes consideration of claims for recredit of sick and annual leave. See John W. Matrau, B-191915, Sept. 29, 1978, and Philip Reisine, B-182014, Sept. 29, 1975.

We believe the latter approach is correct and the distinction we have made in the past between sick and annual leave is faulty. Although unused sick leave is not payable in a lump sum upon an employee's retirement as is annual leave, an increased sick leave balance permits the employee's absence from duty for additional hours without deduction from his salary just as with annual leave. The Comptroller General has traditionally decided cases regarding both the proper use of sick leave and its recrediting. See, e.g., 55 Comp. Gen. 183 (1975) and John H. Adams, B-209769, Mar. 28, 1983.

Therefore, we hereby overrule those cases cited previously where we have stated that claims for sick leave are not monetary claims subject to settlement by the Comptroller General. Since Ms. Marek's claim for recredit of sick leave falls within this category we hold that as a claim cognizable by the Comptroller General it is subject to the provisions of the Barring Act and, as a result, is barred from consideration.

In summary, we hold that Ms. Marek's claims for holiday pay, within-grade increases and annual and sick leave accrual for the period of her alleged misclassification between 1966 and

1974 are barred from consideration since they were not presented within the 6-year period prescribed by 31 U.S.C. § 3702(b).

for Comptroller General
of the United States