



Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** Mary Dawson - Leave Transfer - Death of Leave Recipient

**File:** B-238800

**Date:** April 19, 1991

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## DIGEST

Under the Voluntary Leave Transfer Program, donated leave may not be transferred to the recipient or used after the medical emergency terminates and any unused transferred leave must be restored to the leave donors. Therefore, the retroactive substitution of a recipient's unused donated leave for the recipient's leave-without-pay after the death of the recipient was improper, and the payment of compensation resulting from the retroactive substitution was erroneous. The erroneous payment, however, may be subject to waiver.

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## DECISION

The question in this case is whether, under the Voluntary Leave Transfer Program, annual leave that was donated by leave donors to a leave recipient, but not yet credited to her account at the time of her death, was properly credited to her account after her death and substituted retroactively for her periods of leave-without-pay.<sup>1/</sup> We conclude that the leave donations were improperly credited to the recipient's account after her death and were required to be returned to the donors.

## BACKGROUND

On May 5, 1989, Ms. Mary Dawson, an Army employee at Fort Sam Houston, Texas, entered into the Voluntary Leave Transfer Program, as authorized by the Federal Employees Leave Sharing Act of 1988, Pub. L. No. 100-566 (1988), codified at 5 U.S.C. §§ 6331-6340 (1988), which generally allows federal employees to transfer their annual leave to another employee who has a

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<sup>1/</sup> The question arose at Fort Sam Houston, Texas, and was forwarded to us by Colonel Garry D. Foster, Finance Corps, Office of the Assistant Secretary of the Army for Finance and Accounting.

medical emergency and has used all of his or her own sick leave and annual leave. Annual leave donated and transferred under the program may then be substituted retroactively for periods of leave-without-pay or used to liquidate an indebtedness for advanced annual or sick leave. Ms. Dawson's application to receive donations of leave under the program was approved by the Army, and an announcement and solicitation for leave donors for Ms. Dawson was issued.<sup>2/</sup>

On June 2, 1989, the civilian pay section of Fort Sam Houston's Finance and Accounting Office received the listing of all personnel who had donated leave, but the ministerial operation of actually crediting Ms. Dawson's account on that day had not occurred when Ms. Dawson died. After the leave donors were contacted to verify their willingness to donate under the changed circumstances, a majority of them agreed to do so and on September 9, 1989, 296 hours of leave donated to Ms. Dawson were retroactively substituted for her leave-without-pay through the day before she died. A check in the amount of \$3,039.42 for unpaid compensation, which represented the lump-sum value of the compensation due the decedent for the periods covered by the retroactively substituted leave, with appropriate deductions withheld, was disbursed to her beneficiaries pursuant to 5 U.S.C. § 5583 (1988).

#### ANALYSIS AND CONCLUSION

Although this case arises under the Voluntary Leave Transfer Program, we encountered a similar case under the predecessor Temporary Leave Transfer Program in Harold A. Gibson, 68 Comp. Gen. 694 (1989), where an approved leave recipient died after leave had been donated to him but before the agency had actually retroactively substituted the donated leave for the recipient's leave-without-pay. The regulations governing the predecessor program had specifically provided, and the regulations governing the Voluntary Leave Transfer Program specifically provide, that when the personal or medical emergency affecting a leave recipient terminates, no further requests for transfer of annual leave to the leave recipient can be granted, and any unused, transferred, donated leave remaining to the credit of the leave recipient must be restored to the leave donors. 5 C.F.R. § 630.909(c) (1989); 5 C.F.R. § 630.910(c) (1990).

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<sup>2/</sup> Ms. Dawson had applied on April 20, 1989, under the Temporary Leave Transfer Program, a similar, leave transfer program authorized under Pub. L. No. 100-202, 101 Stat. 1329, 1329-430 (1987). That program was superseded by the Voluntary Leave Transfer Program.

In the Gibson case, the annual leave donations had been received in the agency's administrative service center where they would have been credited to the recipient's leave account except that the personal emergency was terminated by the recipient's death before that could be accomplished. We concluded that the purpose of that program was to provide income protection to a current employee during the period of emergency for which the application had been approved and not after the emergency ends. Thus, we held that the emergency ended upon the employee's death, and at that point the agency should have restored the unused leave to the donors, as required by the regulations.

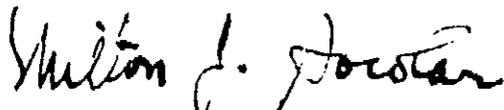
The statutory authority for the current Voluntary Leave Transfer Program states that the medical emergency shall be considered terminated on the date on which the employee is separated from service and requires the employing agency, consistent with Office of Personnel Management (OPM) guidelines, "to ensure that a recipient is not permitted to use or receive any transferred leave" after the emergency terminates. 5 U.S.C. § 6335. The statute also provides for restoring unused transferred leave to the donors when the emergency terminates. 5 U.S.C. § 6336. However, the regulations implementing the Voluntary Leave Transfer Program contain a provision that was not part of the Temporary Leave Transfer Program regulations, which raises some question as to whether the medical emergency can be deemed to continue after the employee dies to allow for retroactive substitution. That provision states:

"An agency may deem a medical emergency to continue for the purpose of providing a leave recipient an adequate period of time within which to receive donations of annual leave."  
5 C.F.R. § 630.910(d) (1990).

OPM's explanatory comments on this new regulatory provision indicate that it was intended to allow agencies discretionary authority to cover past medical emergencies where the actual processing of the donated leave from donor to recipient had not caught up with the termination of the emergency. 54 Fed. Reg. 53307 (1989). All the examples used in OPM's explanation concerned employees who had either returned to work or were contemplating returning to work when their emergencies had ended. We conclude that new section 630.910(d) was not intended to be applied to continue a medical emergency after an employee's death, and OPM has recently advised us that this too is their view.

Accordingly, since the retroactive substitution of the 296 hours of leave for Ms. Dawson's leave-without-pay was improper, the resulting payment of unpaid compensation to her

survivors was erroneous. However, the erroneous payment is subject to consideration for waiver under the provisions of 5 U.S.C. § 5584 (1988) and 4 C.F.R. parts 91 and 92 (1990).

*for*   
Comptroller General  
of the United States