

# DECISION



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

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FILE: B-182549

DATE:

AUG 22 1975

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MATTER OF: Joseph A. Seymour - Claim for Holiday Pay  
or Restoration of Forfeited Annual Leave

DIGEST: Where employee takes annual leave for remainder of leave year (13 days) but is charged for only 11 days because 2 additional holidays were declared by Executive order during that period, there is no authority to restore 6 hours of forfeited annual leave in excess of statutory limit of 240 hours for carry over into next leave year. In addition, there is no authority to authorize holiday pay for 2 additional holidays if employee did not perform work on those days.

This action is a reconsideration of the denial on September 4, 1974, by the Transportation and Claims Division of our Office, of the claim of Mr. Joseph A. Seymour for either holiday pay or recrediting of annual leave for 2 additional holidays declared by Executive order while he was on annual leave as an employee of the Veterans Administration (VA). The claim for recrediting annual leave was disallowed because such recrediting would exceed the statutory limit for annual leave carry over from one leave year to the next.

Mr. Seymour, an employee of the VA Hospital, Miness, Illinois, was granted annual leave from December 16, 1973, through January 5, 1974. During this period of time 2 additional holidays were declared by Executive Order 11750, dated December 14, 1973, for Monday, December 24, and Monday, December 31, 1973. Upon his return to work, Mr. Seymour says he was informed that he had "lost" 16 hours of annual leave because of the 2 additional holidays. The claimant also notes that those employees scheduled to work those 2 holidays received holiday pay, and he asks that he be given some consideration for these 2 holidays.

The VA has reported that Mr. Seymour had a balance of 238 hours of annual leave at the end of leave year 1972 and that he accrued 208 hours during leave year 1973. The administrative report indicates that Mr. Seymour was charged with using 200 hours of annual leave during leave year 1973, but Mr. Seymour argues, in his letter of September 24, 1974, that he used 216 hours. The discrepancy in

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the figures can be explained. Mr. Seymour based his figure of 216 hours on 104 hours for the period in question which would mean 13 days of leave. However, the VA (correctly, under 5 U.S.C. § 6302(a) (1970)) did not charge him with leave for the 2 holidays. Therefore, he was charged only 88 hours or 11 days of leave.

Thus, Mr. Seymour was paid for the 2 holidays and his annual leave was not charged. However, as a result of the declaration of the extra holidays, he did lose 6 hours of leave. Without the holidays, Mr. Seymour would have been charged 216 hours and would have carried over 230 hours of annual leave into 1974. With the holidays considered, he was charged only 200 hours and thus had 246 hours remaining. Since 5 U.S.C. § 6304 (1970), as amended by Pub. L. 93-181, 87 Stat. 705, provides that an employee may not accumulate more than 30 days or 240 hours of annual leave at the beginning of the first full biweekly pay period, Mr. Seymour forfeited 6 hours.

The forfeited annual leave does not appear to be within the exceptions of 5 U.S.C. § 6304(b), (d), or (e), nor within the scope of the interim policy set forth by the Civil Service Commission in Federal Personnel Manual Letter No. 630-22, January 11, 1974. Therefore, even though Mr. Seymour's accumulated annual leave exceeded the maximum of 240 hours by 6 hours because of circumstances beyond his control, there is no authority to permit him to use the excess leave in the next leave year.

There is also no authority for the payment of holiday pay for the 2 additional holidays declared by Executive order since the claimant did not perform work on the holiday as required by 5 U.S.C. § 5546(b) (1970).

Accordingly, we must sustain the action of the Transportation and Claims Division in disallowing Mr. Seymour's claim for holiday pay or recrediting of annual leave.

Concerning the claimant's request as to what other courses of action are available to him, he is advised that decisions of the Comptroller General of the United States rendered on claims settled by the General Accounting Office are conclusive upon the executive branch of the Government. See 31 U.S.C. § 74. Independently of

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the jurisdiction of the General Accounting Office, the United States Court of Claims and the United States District Courts have jurisdiction to consider certain claims against the Government if suit is filed within 6 years after the claim first accrued. See 28 U.S.C. §§ 1346(a)(2), 1491, 2401, and 2501.

R.F. KEMLER

Acting Comptroller General  
of the United States