

**DECISION**

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

FILE: B-184762

DATE: JUL 27 1976

61210

MATTER OF: James Andrews -- Restoration of forfeited  
annual leave

98904

**DIGEST:** Employee who applies for disability retirement effective December 31, 1974, and requests LWOP between January 1 and January 11, 1975, the end of the leave year in order to be off the rolls by January 1, 1975, to qualify for a larger annuity would not be entitled to payment under 5 U.S.C. § 6304 since the forfeiture of annual leave was by operation of 5 U.S.C. 5551(a).

This advance decision is rendered in response to a request received on August 15, 1975, from Captain J.D. Driskill, United States Air Force, Accounting and Finance Officer Comptroller Division, 803d Combat Support Group (SAC), Davis-Monthan Air Force Base, Arizona 85707. Captain Driskill has asked our decision on a claim by Mr. James Andrews, formerly a civilian employee at Davis-Monthan Air Force Base, for restoration of 56 hours of accrued annual leave which were forfeited and a lump-sum settlement therefor.

Mr. Andrews is a former employee of the Military Aircraft Storage and Disposition Center which issued notice to its employees during February 1974 that there would be a "stand down" from normal operations from December 22 through December 31, 1974. Mr. Andrews had tentatively scheduled annual leave to be taken during the "stand down" period.

Mr. Andrews entered sick leave status on August 19, 1974, and remained in a combination of sick and annual leave status until 3:15 p.m. on December 31, 1974. He requested that he be placed on leave-without-pay (LWOP) status effective after the workday of December 31, 1974, thus preserving his right to an increased pension in anticipation of a disability retirement for which he had also applied. Mr. Andrews remained on LWOP status from that time until his disability retirement was approved on February 24, 1975, to be effective as of January 1, 1975.

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The leave year for 1974 for Mr. Andrews ended on January 11, 1975. At that time, he had accrued annual leave in excess of the 360 hours which may be carried over to the next year and the excess leave was declared forfeited. Mr. Andrews contends that he should not forfeit those hours of accrued leave because he was advised by his civilian personnel office that he would be paid for all hours of accrued leave. The Accounting and Finance Officer disputes this claim and states that, because Mr. Andrews was placed on LWOP at his own request before the end of the 1974 leave year, he did not forfeit his leave due to illness and could have used the excess annual leave prior to being placed in the status of LWOP.

Mr. Andrews' request is based upon subsection 6304(d)(1)(C) of title 5, United States Code (Supp. III, 1973), which provides for restoration of annual leave which is lost by forfeiture because of sickness of the employee when the annual leave was scheduled in advance. He claims reimbursement for that portion of his accrued annual leave balance which was not included in the lump-sum leave payment he received upon his retirement. While he received reimbursement for 360 hours of the 416 hours of annual leave that had accrued to him before the end of the leave year, he was required to forfeit 56 hours of annual leave pursuant to 5 U.S.C. § 5551(a) (1970), which prohibits a lump-sum payment for any accrued annual leave in excess of 30 days or the number of days carried over to an employee's credit at the beginning of the leave year.

Public Law No. 93-181 amended section 6304 of title 5, United States Code, to provide for the restoration of lost annual leave under certain prescribed circumstances. The relevant provisions concerning restoration of annual leave due to sickness are contained in section 3 of the act, as quoted in pertinent part below:

"Sec. 3. Section 6304 of title 5,  
United States Code, is amended—

\* \* \* \* \*

"(2) by adding at the end thereof  
the following new subsection:

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"(d)(1) Annual leave which is lost  
by operation of this section because of—

\* \* \* \* \*

"(C) sickness of the employee when  
the annual leave was scheduled in advance;  
shall be restored to the employee.

"(2) Annual leave restored under  
paragraph (1) of this subsection \* \* \*  
which is in excess of the maximum leave  
accumulation permitted by law \* \* \* shall  
be included in the lump-sum payment under  
section 5551 \* \* \* of this title \* \* \*."

The law is clear and unambiguous in stating that relief  
under the cited section may be provided only where annual leave  
was lost by operation of 5 U.S.C. § 6304 (Supp. III, 1973).

With respect to annual leave lost because of sickness of the  
employee, the authority to restore such leave would apply only to  
annual leave which was scheduled in advance of the date that the  
employee desired to take such leave. However, in the present case  
Mr. Andrews who had applied for disability retirement effective  
December 31, 1974, elected to be placed in a leave without pay  
status between January 1 and January 11, 1975, the end of the leave  
year in order to be off the rolls by January 1, 1975, so that he  
would be eligible for a larger annuity. Accordingly, 5 U.S.C.  
§ 6304(d) (Supp. III, 1973) is not applicable to this situation  
and, therefore, Mr. Andrews may not be reimbursed for the lost  
leave under the provisions of that statute. See B-182608,  
February 27, 1975.

**R.F. KELLER**

[Deputy] Comptroller General  
of the United States