

PLM-1
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DECISION



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

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FILE: B-187777

DATE: February 27, 1979

MATTER OF: Clifford Lomax - [Reconsideration of request
for recredit of forfeited annual leave]

DIGEST: Former Library of Congress employee was granted extended sick leave from March 1 through December 3, 1974, when such leave was exhausted. He was on annual leave from that date until the last hour on December 31, 1974, when he was placed on leave without pay incident to application for disability retirement which was approved on March 5, 1975. Upon reconsideration, former employee is entitled to lump-sum payment for 31 hours of 56 hours of forfeited annual leave since they were forfeited because of administrative error.
B-187777, January 3, 1978, modified.

This action concerns a request for reconsideration of decision Clifford Lomax, B-187777, January 3, 1978, which disallowed the claim by a former employee of the Library of Congress for restoration of and lump-sum payment for 56 hours of annual leave which were forfeited at the end of the 1974 leave year.

The facts were set forth in our prior decision and will be repeated only insofar as is necessary for the purpose of reconsideration. Mr. Lomax was placed on sick leave on March 1, 1974, and he remained either on extended sick leave or annual leave until the next-to-last hour of his workday on December 31, 1974. He was then placed on leave without pay (LWOP) until his disability retirement application, which had been submitted to the Civil Service Commission on December 12, 1974, was approved on March 5, 1975. As a result of such actions Mr. Lomax forfeited 56 hours of annual leave at the end of the 1974 leave year. He seeks to have this forfeited leave restored to his account and to be paid a lump-sum therefor under the provisions of 5 U.S.C. § 6304(d)(1) (1976).

Our decision of January 3, 1978, states, in pertinent part:

"Under the provisions of 5 U.S.C. § 6304(d)(1) (Supp. V, 1975), annual leave which is lost by operation of section 6304 may be restored to the employee

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if lost due to administrative error or to the exigencies of public business or the sickness of the employee when the annual leave was scheduled in advance. In the present case, there is no indication that the Library of Congress considers the forfeiture of leave by Mr. Lomax to be caused by administrative error. See Samuel Bernstein, B-187055, March 4, 1977. Furthermore, the leave cannot be restored under 5 U.S.C. § 6304(d) (1) (C) relating to the sickness of the employee since the leave was not scheduled in advance. See 5 C.F.R. § 630.308 (1977)."

Section 6 of Library of Congress Regulation 2015-4 (February 22, 1974) provides in pertinent part as follows:

"E. Scheduling Annual Leave

"(1) Supervisors are responsible for planning and scheduling annual leave throughout the leave year. While employees also have an obligation to request annual leave sufficiently in advance, failure on their part to do so does not relieve management of its responsibility to assure that the leave is in fact scheduled for use. Supervisors should take positive action to assure that annual leave is scheduled for use during the leave year to avoid situations where employees approach the end of the leave year with a significant amount of annual leave that must be used or forfeited. Supervisors may schedule a period in which annual leave must be taken if (1) an employee does not request leave for a period in which it can be granted and (2) leave not so scheduled or requested would be forfeited at the end of a leave year."

We considered the above regulation prior to rendering our decision of January 3, 1978, and concluded that it did not require a supervisor to schedule annual leave for an employee in the absence of a request from the employee. We are still of the same opinion. However, we have held that in case of prolonged illness preceding the end of a leave

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year it would be presumed that if the employee had been properly advised of his annual leave balance he would have requested scheduling in advance of annual leave otherwise subject to forfeiture. B-182608, February 19, 1976. We believe that if Mr. Lomax's supervisor had notified Mr. Lomax of the amount of leave subject to forfeiture, he would have requested sufficient annual leave to be scheduled to avoid a forfeiture. Since the record shows that Mr. Lomax was not given notification that he would forfeit annual leave if he did not apply for it, an administrative error occurred. Therefore, we hold that a lump-sum payment should be made for the annual leave lost as a result of the error.

The record shows that if Mr. Lomax had been timely notified of his leave situation, annual leave would have been scheduled from November 21, 1974, to January 3, 1975. The record also shows that Mr. Lomax applied for disability retirement on December 12, 1974, and that the Library of Congress placed him on LWOP for the period commencing with the last hour of Mr. Lomax's December 31, 1974, scheduled workday, to preserve his entitlement to cost-of-living increases on his annuity. The latter action was proper since it was in accord with Civil Service Commission Bulletin No. 831-58, III, December 11, 1974. Accordingly, we hold that 25 hours of annual leave for the period December 31, 1974, to January 3, 1975, were forfeited because of the action to preserve Mr. Lomax's entitlement to cost-of-living increases on his annuity and the balance of 31 hours was forfeited because of administrative error.

In view of the above, our prior decision of January 3, 1978, is modified and a settlement for a lump-sum payment to Mr. Lomax for 31 hours of annual leave will be issued in due course.

R. F. Kitten.
Deputy Comptroller General
of the United States