

DOCUMENT RESUME

07995 - [C3288399]

[Claim for Lump-Sum Payment of Annual Leave]. E-191474. November 20, 1978. 4 pp.

Decision re: Delbert E. Nize; by Robert F. Keller, Deputy Comptroller General.

Contact: Office of the General Counsel; Personnel Law Matters I. Organization Concerned: Department of the Air Force.

Authority: (P.L. 93-181; 87 Stat. 705; 5 U.S.C. 6303(b)). 5 U.S.C. 6301. 44 Comp. Gen. 337. 44 Comp. Gen. 339. Air Force Regulation 40-670. B-186684 (1977).

A former civilian employee appealed the disallowance of his claim for a lump-sum payment for 30 hours of annual leave. The claim was denied because the employee had not served 90 days as required by 5 U.S.C. 6303. Although employees with temporary appointments of 90 days or more may now have leave credited before 90 days of service are completed, there is no authority for retroactive application in this case. Disallowance of the claim was sustained. (RHS)

**DECISION**

*R. ... 11/20/78*

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

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FILE: B-191474

DATE: November 20, 1978

MATTER OF: Delbert E. Mize - Claim for lump-sum  
payment of annual leave

- DIGEST:
1. Claim for lump-sum payment for 30 hours of annual leave by former employee of Department of the Air Force was properly denied where temporary appointment was terminated by Department effective September 7, 1973, after a period of 89 days, since applicable provisions of 5 U.S.C. § 6303(b) required employee's retention on the rolls of the Department for a continuous period of 90 calendar days before the annual leave he earned was credited and available for use.
  2. Employee's appointment for approximately 1 year was terminated September 7, 1973, for lack of work and his claim for lump-sum leave payment was disallowed because he had not served 90 days as required by 5 U.S.C. § 6303. Section 2 of Pub. L. No. 93-161, December 14, 1973, 87 Stat. 705, amended 5 U.S.C. § 6303(b), and employers with appointments of 90 days or more may now have leave credited. However, we find no authority for application of amended statute retroactively to September 7, 1973.
  3. In the absence of specific statutory authority, purported advice of Government agents may not establish liability of United States even though advice is given in performance of official duties. B-186684, February 2, 1977, and 44 Comp. Gen. 337, 339 (1964).

This decision is in response to a letter dated December 20, 1977, from Mr. Delbert E. Mize, appealing the disallowance by our Claims Division of his claim for a lump-sum payment for 30 hours of annual leave as a former employee of the Department of the Air Force.

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The record shows that Mr. Mize was given a temporary appointment for the period June 11, 1973, through June 19, 1974. However, Mr. Mize served only between June 11 and September 7, 1973, because his appointment was terminated on the latter date due to lack of work. Settlement Certificate Z-1202301, December 1, 1977, concluded as follows:

"Since you served in an appointment for less than 90 days, under the provisions of subsection 6306(b) [s.c] [5 U.S.C. § 6303(b) (1970)], you are not entitled to be reimbursed for the annual leave which you earned. Accordingly, because this Office has no authority to waive or modify a statute or statutory regulation, your claim for reimbursement for 30 hours annual leave may not be allowed."

Mr. Mize has presented no new evidence on appeal, nor has he alleged any error of fact or law contained in Settlement Certificate Z-1202301, December 1, 1977. However, Mr. Mize contends that the adjudication of our Claims Division does not satisfy his claim nor address itself to the matter. Mr. Mize also contends that persons in his Civilian Personnel Section assured him he would receive his leave time because the 90th day was Saturday, a nonworkday. In addition, Mr. Mize requests reconsideration due to the change in the applicable statute which he contends demonstrates the inequity of the rule at the time of his termination.

On September 7, 1973, civilian employees of the Federal Government were entitled to annual leave under the provisions of 5 U.S.C. § 6303 (1970), which stated in pertinent part as follows:

"(a) An employee is entitled to annual leave with pay which accrues as follows—

\* \* \* \* \*

"(2) three-fourths day for each full biweekly pay period \* \* \* for an employee with 3 but less than 15 years of service; and

\* \* \* \* \*

"(b) Notwithstanding subsection (a) of this section, an employee is entitled to annual leave under this subchapter only after being currently

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employed for a continuous period of 90 days under one or more appointments without a break in service. After completing the 90-day period, the employee is entitled to be credited with the leave that would have accrued to him under subsection (a) of this section except for this subsection."

Since Mr. Mize's first day of employment was June 11, 1973, and his termination date was September 7, 1973, it is apparent that he served for a period of 89 days. Air Force Regulation 40-630, paragraph 7b, in effect on September 7, 1973, implemented the applicable provisions of 5 U.S.C. § 6303 by stating that an employee must have been currently on the rolls in either a pay or nonpay status for a continuous period of 90 calendar days before the annual leave he earns is credited and available for use. If he is separated before he completes this 90-day qualifying period, he receives no credit for annual leave and is not entitled to a lump-sum payment for leave.

The statutory provisions of 5 U.S.C. § 6301 et seq. govern the leave system for Federal employees and it is the responsibility of the heads of departments and agencies to administer the annual leave system within the framework of those laws. As stated by our Claims Division we have no authority to waive a statutory provision. Moreover, we do not have authority to direct a department or agency in regard to the date established for the termination of an employee. Therefore, under the statutory provisions applicable on September 7, 1973, Mr. Mize is precluded from any entitlement to annual leave under the circumstances presented. While Pub. L. No. 93-181, § 2, December 14, 1973, 87 Stat. 705, amended 5 U.S.C. § 6303(b), effective December 14, 1973, and employees with temporary appointments of 90 days or more may now have leave credited before 90 days of service, we find no authority for retroactive application of the amended provision to Mr. Mize's claim.

In view of the preceding analysis and the statutory provisions controlling Mr. Mize's claim, the purported advice by Civilian Personnel officials does not provide a basis for allowing the claim. As we stated in our decision B-186684, February 2, 1977, " \* \* \* in the absence of specific statutory authority, the United States is not liable for the erroneous actions of its officers, agents, or employees even though committed in the performance of official duties." See also 44 Comp. Gen. 337, 339 (1964).

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Accordingly, the disallowance by our Claims Division is sustained.

*Atkinson*  
Deputy Comptroller General,  
of the United States