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

FILE: B-204522

DATE: March 23, 1982

MATTER OF: Donald A. Adams - - "Buy Back" of Annual Leave

DIGEST: An employee used annual leave and sick leave in 1967 to recuperate from a work-related injury and received workers' compensation award in 1968. The employing agency advised the employee that repurchased leave would be forfeited under 5 U.S.C. 6304(a) upon reconstruction of his leave accounts. The employee argues that leave may be restored under 5 U.S.C. § 6304(d) due to administrative error. The claim may not be allowed since provisions of section 6304(d) are not applicable to situations involving the buy back of annual leave following a workers' compensation award.

Mr. Donald A. Adams, an employee of the Federal Bureau of Investigation (FBI), has appealed from a settlement issued by our Claims Group on June 23, 1981, which recommended against Mr. Adams buying back annual leave under the workers' compensation provisions of 20 C.F.R. § 10.310 (1981). We concur with the Claims Group's action for the reason that any annual leave repurchased by Mr. Adams would be forfeited by action of 5 U.S.C. § 6304(a) (Supp. III 1979) and would not be eligible for restoration under 5 U.S.C. § 6304(d) (1976).

Due to a recurrence of injuries sustained in a work-related injury in 1965, Mr. Adams used 286 hours of sick leave and 170 hours of annual leave during the period April 24 to June 30, 1967. After the Department of Labor's Office of Workers' Compensation Programs approved his workers' compensation claim on January 5, 1968, Mr. Adams requested the FBI's advice regarding his ability to buy back and reinstate annual leave used by him in 1967. The agency reconstructed Mr. Adams' leave accounts and determined that repurchase of the 170 hours would cause him to exceed the annual leave ceiling of 30 days imposed by 5 U.S.C. § 6304(a) beginning with the years 1972 and 1973. Thus, at the beginning of the 1974 leave year, all of the annual leave that had been bought back would be forfeited due to section 6304(a). Accordingly, the FBI advised

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Mr. Adams on February 12, 1978, that the annual leave, if repurchased, would be subject to forfeiture under section 6304(a).

Mr. Adams contends that annual leave bought back by him would not be subject to the forfeiture rule because an administrative error within the meaning of 5 U.S.C. 6304(d) caused him to lose annual leave during the period in question. The circumstances giving rise to the charge that an administrative error caused the loss of leave are not provided. However, for the reasons set forth below, that information is not essential to our disposition of this case.

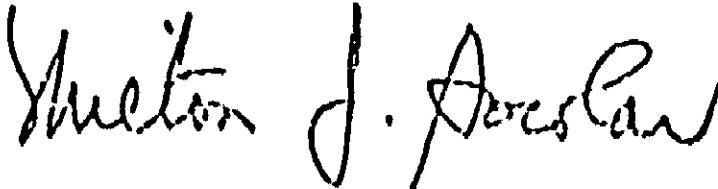
At the outset we note that Mr. Adams' claim before this Office does not involve the buy back of the 286 hours of sick leave. That matter is currently being processed by his agency. Also we note that because the lapse of time between the approval of his award by the Department of Labor (1968) and the receipt of his claim in this Office (1981), the matter of the statute of limitations imposed by 31 U.S.C. § 71a (1976) arises. That section bars any claim received in this Office more than six years after it first accrues. However, it is not clear whether section 71a applies to the buy back of annual leave under the provisions of 20 C.F.R. § 10.310. This matter is currently being discussed with officials at the Office of Workers' Compensation, Department of Labor. Since Mr. Adams' claim must be denied under present case law, we will not address the statute of limitations issue at this time in order to avoid further delay.

We have held that under the forfeiture provisions of 5 U.S.C. 6304(a), an employee who buys back annual leave following a workers' compensation award must have his annual leave record reconstructed to show the recredit of the leave as of the time it was used and that in such a reconstruction, annual leave reinstated in excess of the maximum permissible carry over would be forfeited. See Helen Wakus, B-184008, March 7, 1977. However, Mr. Adams argues that under section 6304(d) of title 5 of the United States Code such forfeiture may be avoided since the annual

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leave was lost because of an administrative error. This Office has previously considered and rejected such an argument. In Helen Makus, supra, we held that the exceptions to the forfeiture rule contained in section 6304(d) are not applicable in a situation involving the buy back of annual leave. See also Betty J. Anderson, B-182608, August 9, 1977. Thus, any annual leave bought back by Mr. Adams and subsequently forfeited by operation of section 6304(a) would not be eligible for restoration under section 6304(d).

Accordingly, the claim is denied.

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for 
Comptroller General
of the United States



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20543

In Reply
Refer to: B-204522(LHG)

March 23, 1982

Mr. Ralph M. Hartman, Director
Office of Workers' Compensation Programs
Department of Labor
Washington, D.C. 20210

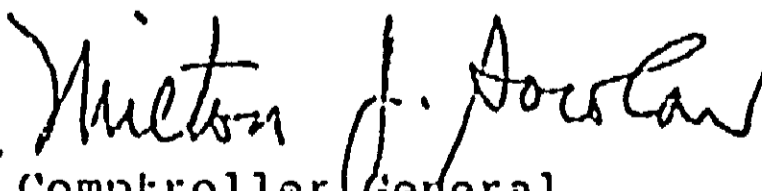
Dear Mr. Hartman:

Enclosed is a copy of our decision of today Donald A. Adams, B-204522, which denied Mr. Adams' claim to avoid the forfeiture of his annual leave that he is attempting to buy back under the provisions of 20 C.F.R. § 10.310 (1981).

Because more than 6 years had elapsed since Mr. Adams' award had been approved by your office, a collateral issue was raised in our decision. That issue is whether the statute of limitations contained in 31 U.S.C. § 71a (1976) applies to an employee's attempts to buy back annual leave under 20 C.F.R. § 10.310. Since our decision in Mr. Adams' case would require the forfeiture of any leave that he bought back, we declined to address the question of the applicability of the statute of limitations to his claim.

We have been informally advised by Mr. Warren Landis of your office that, in his opinion, the statute of limitations found in 31 U.S.C. § 71a does not bar claims to buy back leave. However, our initial reading of the matter inclines us to a view that such claims would be barred. In view of our apparent disagreement in this matter we would appreciate an opportunity to discuss this matter further with your office.

Sincerely yours,

for 
Comptroller General
of the United States