

DECISION



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

FILE: B-205709

DATE: March 16, 1983

MATTER OF: Edmond Godfrey - "Buy Back" of Annual Leave - Workers' Compensation

DIGEST:

1. Employee who used restored 1977 annual leave and regular annual leave in 1978 to recuperate from work-related illness accepted workers' compensation and bought back leave used. Upon reconstruction of the employee's leave record to show the recredit of the leave as of the time it was used, regular annual leave reinstated in excess of the maximum carry-over stated in 5 U.S.C. § 6304(a) is subject to forfeiture and may not be restored under 5 U.S.C. § 6304(d). Previously restored leave recredited to leave year 1978 was subject to forfeiture at the end of leave year 1979 and therefore is not eligible for further restoration.

2. Employee who used restored 1977 annual leave and regular annual leave in 1978 to recuperate from work-related illness accepted workers' compensation and bought back leave used. Upon reconstruction of the employee's leave records to show recredit of the leave as of the time it was used, 66 hours of repurchased restored and regular annual leave were subject to forfeiture. Since the employing agency failed to apprise the employee of the possibility of forfeiture, the employee at his election may choose to be placed on annual leave for 1978 to avoid any or all of the forfeiture.

Alfred M. Zuck, Assistant Secretary for Administration and Management, U.S. Department of Labor, requests a decision as to whether Edmond Godfrey may have restored to his leave account 10 hours of regular annual leave and 56 hours of restored annual leave which he bought back upon his acceptance of compensation under the Federal Employee's Compensation Act, 5 U.S.C. §§ 8101-51 (1976). We hold that regular annual leave reinstated as the result of buy back and subject to forfeiture under 5 U.S.C. § 6304(a) (Supp. III 1979), may not be restored under 5 U.S.C. § 6304(d) (1976), and that restored leave recredited to a prior leave year and subject to forfeiture under 5 C.F.R. § 630.306 (1982) is not eligible for further restoration. However, since the employing agency failed to advise the employee that a portion of the repurchased leave would be subject to forfeiture, the employee at his election may choose to be placed on annual leave retroactively to avoid any or all of the forfeiture. He would then be entitled to a refund of the amount paid for that leave from his employing agency and would be required to refund any workers' compensation received for that period to the Office of Workers' Compensation Programs, Department of Labor.

The relevant circumstances insofar as can be determined from the record and supplementary information furnished by the Department of Labor are as follows. During the period February 13 to October 10, 1978, a work-related illness caused Mr. Godfrey to use 888 hours of sick leave and 392 hours of annual leave, including 56 hours of annual leave which had been forfeited in 1977 due to exigencies of public business and restored under the provisions of 5 U.S.C. § 6304(d)(1). After the Department of Labor's Office of Workers' Compensation Programs approved his workers' compensation claim, Mr. Godfrey submitted to the agency an application dated September 22, 1980, requesting buy back and reinstatement of the leave under the workers' compensation provisions of 20 C.F.R. § 10.310 (1982). The Department of Labor processed Mr. Godfrey's application during the latter part of 1980 and implemented the repurchase in early 1981.

Because of Mr. Godfrey's buy back of leave, the Department of Labor reconstructed his accounts to recredit the leave as of the time it was used. The agency found that repurchase of the regular annual leave caused Mr. Godfrey's

leave balance for 1978 to exceed by 10 hours the 240-hour annual leave ceiling imposed by 5 U.S.C. § 6304(a). Additionally, the agency determined that the 56 hours of restored leave recredited to leave year 1978 were subject to forfeiture based on provisions in 5 C.F.R. § 630.306 (1981), which impose a 2-year limitation on the use of such leave.

Mr. Godfrey contends that extended illness prevented him from scheduling and using the regular and restored annual leave recredited to leave year 1978 and, therefore, the leave may be reinstated to his account under the provisions of 5 U.S.C. § 6304(d)(1), as interpreted in our decisions Robert W. Lochridge, B-193431, August 8, 1979, and Robert T. Good, B-182608, February 19, 1976. In those decisions, we held that an employee who has suffered a prolonged illness preceding the end of a leave year may be presumed to have scheduled annual leave otherwise subject to forfeiture. Additionally, Mr. Godfrey states that he would not have exercised his option to buy back the leave had he been advised of the possibility that repurchased leave would be forfeited.

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. Although Mr. Godfrey contends that under 5 U.S.C. § 6304(d) forfeiture of the 10 hours of regular annual leave may be avoided since extended illness prevented him from scheduling and using the leave, we have consistently stated that exceptions to the forfeiture rule contained in section 6304(d) are not applicable in a situation involving the buy back of annual leave. Helen Wakus, above; Betty J. Anderson, B-182608, August 9, 1977. Thus, the 10 hours of annual leave bought back by Mr. Godfrey and subsequently forfeited by operation of section 6304(a) are not eligible for restoration under section 6304(d).

With respect to the 56 hours of previously restored leave, our decision in Helen Wakus, cited above, requires that the leave be recredited to leave year 1978. As pointed out by the agency, 5 C.F.R. § 630.306, implementing the restoration of leave provisions in 5 U.S.C. § 6304(d), imposes a 2-year limitation on the use of restored leave. The regulation provides that:

"Annual leave restored under section 6304(d) of title 5, United States Code, must be scheduled and used not later than the end of the leave year ending two years after:

* * * * *

"(b) The date fixed by the agency head, or his designated official, as the termination date of the exigency of the public business which resulted in forfeiture of the annual leave * * *."

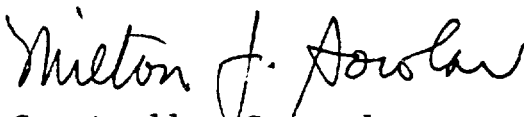
Based on the provisions of 5 C.F.R. § 630.306 and explanatory materials issued by the Office of Personnel Management, we have held that leave restored under 5 U.S.C. § 6304(d) which is unused at the end of the 2-year period is again forfeited with no further right to restoration. Patrick J. Quinlan, B-188993, December 12, 1977. Also, we have stated that the 2-year limitation may not be waived or modified even where there is an indication of extenuating circumstances. Patrick J. Quinlan, above. See also Federal Personnel Manual Letter No. 630-22 (January 11, 1974).

The Department of Labor has advised us that the exigency of public business causing Mr. Godfrey to forfeit the 56 hours of 1977 leave was determined to end on December 31, 1977. By operation of the provisions of 5 C.F.R. § 630.306, the forfeited and restored leave was again subject to forfeiture at the end of the 1979 leave year. Under the rules stated in Patrick J. Quinlan, above, the restored leave recredited to Mr. Godfrey for leave year 1978 and forfeited at the end of leave year 1979 would not be eligible for further restoration to Mr. Godfrey's account.

Although we hold that the 66 hours of leave bought back by Mr. Godfrey may not be restored to his account under section 6304(d), we note that the Department of Labor apparently failed to advise the employee before the buy back was implemented that a portion of the repurchased leave would be subject to forfeiture. Regulations in 20 C.F.R. § 10.310, governing the buy back of leave, provide in part that the employing agency "shall help the employee determine how much the 'buy back' cost will be in his or her case." We interpret these provisions as imposing an obligation upon the employing agency to advise the employee of all costs associated with buy back, including the potential forfeiture of repurchased leave upon reconstruction of the employee's leave account.

Since it appears that the Department of Labor failed to apprise Mr. Godfrey of the consequences of buy back, we would have no objection, if Mr. Godfrey so elects, to the Department of Labor's retroactively placing him on annual leave for all or part of the 66 hours for the 1978 leave year so as to avoid forfeiture. Mr. Godfrey would thus be entitled to be paid by the Department for the 66 hours of leave at the pay rates then in effect and he would have to refund that portion of employee's compensation covered by that leave. See Betty J. Anderson, above.

A review of our prior decisions indicates that the leave forfeiture problems presented by Mr. Godfrey's claim are recurring. See, for example Donald A. Adams, B-204522, March 23, 1982; John P. Mitchell, B-180010.12, March 8, 1979; and Betty J. Anderson and Helen Wakus, above. Therefore, by separate letter to the Director of the Office of Personnel Management (OPM), we are recommending that OPM work with the Office of Workers' Compensation Programs to provide Federal agencies with detailed guidance pertaining to the administration of buy back of leave.

for 
Comptroller General
of the United States