

DECISION



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

FILE: B-213849

DATE: May 14, 1984

MATTER OF: Wallie Breig- Forfeiture of Annual Leave

DIGEST:

An employee who transferred from the Social Security Administration (SSA) to the Department of Labor was erroneously given a lump sum leave payment. He returned the payment, but his leave balance from SSA was not credited to his account until 2 years later. Even though it was an error not to have promptly credited the annual leave upon his transfer, since the employee had sufficient time to schedule and use the excess leave after it was credited, he may not be recredited with the leave which he forfeited at the end of the leave year.

Mr. Thomas A. Komarek, Assistant Secretary for Administration and Management, Department of Labor (DOL), has requested our decision as to whether Mr. Wallie Breig, a DOL employee, must forfeit 61 hours of annual leave. Since administrative error was not the direct cause of Mr. Breig's failure to use 61 hours of excess leave prior to its forfeiture, he may not have this leave recredited to his account.

Mr. Komarek states that Mr. Breig transferred from the Social Security Administration (SSA), to the Department of Labor in September 1980. Upon his departure from SSA Mr. Breig was issued a check covering 144 hours of accrued annual leave. Mr. Breig, realizing that the lump sum payment was made in error, returned the payment to SSA.

From September 1980 until September 1982, Mr. Breig and DOL's Regional Personnel Office (Kansas City, Missouri), tried repeatedly to obtain a Record of Leave Data (SF-1150) from the SSA. In late September or early October 1982, the SF-1150 was received and Mr. Breig's leave records were adjusted with a credit of 144 hours of annual leave to reflect his correct leave balance during pay period 22, ending October 16, 1982. From the time of the adjustment

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until the end of the 1982 leave year (January 8, 1983), Mr. Breig's Earnings and Leave Statements showed an appropriate "use/lose" balance reflecting the recrediting of leave earned at SSA and accrual and use of leave during those pay periods. Prior to the adjustment, Mr. Breig, who earned 6 hours of leave each pay period, had an annual leave balance of 155 hours. The adjustment added 144 hours and he accrued an additional 46 hours before the end of the leave year. Mr. Breig used 44 hours of annual leave between October 3, 1982, and January 8, 1983, and thus he forfeited 61 hours of leave at the end of the leave year.

The record shows that Mr. Breig did not use the 61 hours of leave because he thought that he had 1 year from the time of the credit to his leave account within which he could use the leave. In any event Mr. Breig did not schedule the use of the leave nor did he request that the leave be scheduled and we are asked whether, given the unusual circumstances of this case, Mr. Breig may have the 61 hours of annual leave recredited to his account.

Annual leave forfeited at the end of the leave year can be restored under the circumstances set forth in 5 U.S.C. § 6304(d)(1) which provides as follows:

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

"(A) administrative error when the error causes a loss of annual leave otherwise accruable after June 30, 1960;

"(B) exigencies of the public business when the annual leave was scheduled in advance; or

"(C) sickness of the employee when the annual leave was scheduled in advance;

shall be restored to the employee."

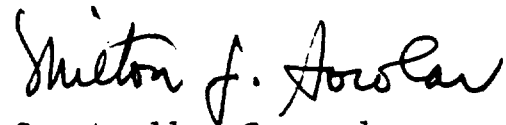
Since Mr. Breig did not schedule the use of annual leave in advance, even though he states that he could not arrange a vacation because of his work schedule, he cannot have it restored under subparagraph (B) above, based upon exigencies of the public business. Michael Dana, 56 Comp. Gen. 470 (1977). Because there is nothing in the record to indicate that sickness prevented Mr. Breig from using his leave, subparagraph (C) is also inapplicable.

In Willie W. Louie, 59 Comp. Gen. 335 (1980), we had before us the case of an employee who had forfeited leave because his leave balance from a position from which he had transferred was not credited to him at the time of his reemployment in his new position but was credited at a later date when the leave was subject to forfeiture. In that case we held that the leave could be recredited to the employee since the failure to immediately recredit the leave was administrative error and the subsequent forfeiture was a result of such error.

In Mr. Breig's case, although the failure to immediately recredit his prior leave balance in his new position may be viewed as administrative error, that error was not the direct cause of the forfeiture of his leave. Mr. Breig was on notice that he had 105 hours of use or lose leave in October 1982. He could have scheduled the use of this leave at that time and he did in fact use 44 hours of it. Therefore, since Mr. Breig had an opportunity to schedule and use the forfeited leave but did not do so, it cannot be said that but for the administrative error he would not have forfeited the leave. Rather, it was Mr. Breig's subsequent inaction which ultimately caused the forfeiture of the leave. This case is thus distinguishable from Louie, above, where at the time of recrediting the leave was forfeited.

With respect to the fact that Mr. Breig did not know he had to schedule or use the leave prior to the end of the leave year, as opposed to the fiscal year, we have consistently held that the failure to give actual notice of the scheduling requirement to an employee is not an administrative error as employees are charged with actual or constructive notice of the requirement. Dana, above.

Mr. Breig's request for recredit of 61 hours of annual leave is accordingly denied.



Acting Comptroller General
of the United States