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DECISION



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

FILE: B-216378

DATE: October 23, 1984

MATTER OF: Patricia A. Bolstad

DIGEST:

An employee whose annual leave account was erroneously overcredited due to the employing agency's error in establishing her service computation date requests waiver of the collection of the excess leave under 5 U.S.C. § 5584. Since the error is susceptible to correction without creating a negative leave balance, there was no overpayment of pay or allowances which may be considered for waiver under the waiver statute.

Mrs. Patricia A. Bolstad has appealed our Claims Group's disallowance of her request for waiver under 5 U.S.C. § 5584 of 180 hours of annual leave which were erroneously credited to her annual leave account. This error was the result of the agency's improperly placing her in a higher leave earnings category during the period from November 23, 1975, through June 30, 1979.^{1/} The Claims Group determined that the excess leave erroneously credited to the employee's leave account was not subject to consideration for waiver under 5 U.S.C. § 5584. Upon review of this matter, we sustain the determination of our Claims Group that the erroneous crediting of annual leave is not subject to waiver.

Mrs. Bolstad is employed in the Hudson, New York District Office of the Social Security Administration, Department of Health and Human Services. Upon her initial employment with the District Office on July 22, 1973, her service computation date was erroneously established as November 15, 1960, rather than June 21, 1964. The error was due to the agency's improperly including as creditable service, the employee's prior service with the Agricultural Stabilization and Conservation Service County Office

^{1/} Mrs. Bolstad's July 10, 1984 appeal of the Claims Group's action dated May 15, 1984, was forwarded to this Office by the Honorable Gerald B. Solomon, House of Representatives.

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in Columbia County, New York. Such service with a County Office is not creditable service for purposes of determining a federal employee's leave earning rate unless the individual is employed by the Department of Agriculture. See 5 U.S.C. § 6312, Federal Personnel Manual Supplement (FPM) 990-2, Book 630, Subch. S3-2(c)(2) and FPM Supplement 296-31, Appendix B, Subch. S210-8(b).

As a result of the agency's improperly including the employee's County Office service as creditable service for leave earning purposes, the employee was credited with annual leave at the rate of 8 hours per pay period beginning November 23, 1975, instead of on July 1, 1979. As a result she was erroneously credited with a total of 188 hours of annual leave in addition to her entitlement during the period from November 23, 1975, through June 30, 1979.

On January 3, 1982, the Department of Health and Human Services submitted to our Claims Group a request for waiver of the erroneous credit of 188 hours of annual leave. By letter dated May 15, 1984, the Claims Group advised the Department that the erroneous credits of 188 hours of annual leave were not subject to waiver under 5 U.S.C. § 5584 since proper adjustment of the employee's leave balance to correct the error would not result in a negative leave balance for any of the leave years involved.^{2/} Thus, the Claims Group stated that under the circumstances there had been no overpayment of pay which could be considered for waiver under 5 U.S.C. § 5584.

In her appeal of the Claims Group's denial of waiver of the erroneous leave credit the employee states that she is being adversely affected for an error which was solely the agency's fault and of which she had been unaware. In addition, she states that the considerable delay in the discovery of the erroneous overcredit of annual leave has greatly increased the degree by which an adjustment to correct the error would adversely affect her leave balance.

^{2/} As stated by the Claims Group in its May 15, 1984 letter, where leave has been erroneously credited the leave account is to be reconstructed for each year involved to arrive at a proper current balance and to determine whether an erroneous payment has resulted. See B-171092, December 1, 1970, and B-176020, August 4, 1972.

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She states that around the time of her appointment the agency had been advised that her County Office service was not creditable service for leave earning purposes.

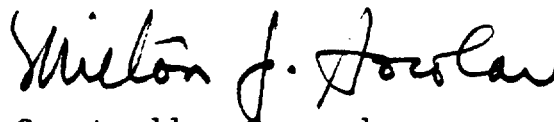
By letter dated November 6, 1973, the New York State Agricultural Stabilization and Conservation Service Office had advised the Department of Health, Education, and Welfare, with regard to Mrs. Bolstad's appointment, that County Office employees do not have civil service status and that such service is not creditable for leave earning purposes. Sometime in 1974 the agency realized that the appointment by career transfer from the County Office was erroneous since such employees do not have civil service status. The employee was subsequently given a career-conditional appointment effective April 13, 1975. In 1977 the Department requested waiver of the salary payments which the employee had received during the period of her erroneous appointment, from July 22, 1973, to April 12, 1975. The Claims Group settlement indicated that the employee was entitled as a matter of right to retain the compensation she had received on the basis that she was a de facto employee during the period of her improper appointment. However, the agency apparently did not consider the effect of Mrs. Bolstad's prior employment with the County Office on her leave accrual until sometime after the matter of her improper "transfer" from the County Office to the agency had been resolved. By letter dated December 2, 1982, the Department stated that incident to a recent review of Mrs. Bolstad's Official Personnel Folder, it was discovered that her service computation date had not been adjusted to delete the credit for her County Office service.

It is unfortunate that appropriate agency officials did not sooner discover the erroneous annual leave credit to Mrs. Bolstad's annual leave account. However, the agency's delay in discovering the error does not provide a basis for allowing waiver of the excess annual leave under 5 U.S.C. § 5584. That statute provides that a claim of the United States against an employee "arising out of an erroneous payment of pay or allowances" may be waived, in whole or in part, by the Comptroller General of the United States, or by the head of the agency in the case of an amount under \$500. Pay, as it is defined in the regulations implementing the waiver provision, includes "payment for accumulated and

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accrued leave." See 4 C.F.R. § 91.2(c). However, in cases involving the erroneous crediting of annual leave we have interpreted "erroneous payment" to mean a grant of leave which, when corrected, would result in a negative leave balance in the employee's annual leave account. Otherwise, there is no overpayment which may be considered for waiver under the waiver statute since the error is susceptible to correction through reduction of the employee's positive leave balance. See B-176020, August 4, 1972; Bessie P. Williams, B-208293, January 26, 1983, and Lamoyne J. DeLille, 56 Comp. Gen. 824, 828 (1977). In this case it has been determined that there was a sufficient balance of annual leave in Mrs. Bolstad's leave account during the period when the excess leave was credited to cover the adjustment necessary because of the administrative error. The agency's delay in discovering the erroneous leave credits and in taking corrective action does not provide any basis for allowing waiver under 5 U.S.C. § 5584 where correction of the error would not result in a negative leave balance so that there is no overpayment of pay. In addition, we are aware of no other statute or regulation which would allow the employee to retain the erroneous credits of annual leave.

In accordance with the above, we sustain the action of our Claims Group which held that the required leave balance reduction of 188 hours for erroneously credited annual leave is not subject to consideration for waiver under 5 U.S.C. § 5584.



Acting Comptroller General
of the United States