



The Comptroller General
of the United States

Washington, D.C. 20548

Howell

Decision

Matter of: Jack V. Morkal - Restoration of Annual Leave -
Scheduling Requirement - Administrative Error

File: B-232269.2

Date: August 22, 1989

DIGEST

In an attempt to avoid forfeiture of annual leave at the end of the year, an employee of the National Weather Service scheduled leave in August and September 1987. The leave was approved in writing, then canceled due to public exigencies, and was not rescheduled by the agency prior to the end of the leave year, resulting in forfeiture of 48 hours of the employee's annual leave. Where an employee demonstrates that, but for an agency's failure to reschedule properly requested leave, he would be entitled to restoration of leave under 5 U.S.C. § 6304(d)(1)(B), such leave may be restored under the administrative error provision of 5 U.S.C. § 6304(d)(1)(A).

DECISION

This decision is in response to a request by the National Weather Service Employees Organization on behalf of Jack V. Morkal for restoration of forfeited annual leave. For the reasons stated below, Mr. Morkal is entitled to restoration of 48 hours annual leave.

BACKGROUND

Mr. Morkal, a former electronics technician of the National Weather Service (NWS), Fairbanks, Alaska, claims reimbursement for 48 hours of annual leave which were forfeited in 1987 due to exigencies of the public business.

Mr. Morkal requested 72 hours annual leave on July 1, 1987. The leave was to be taken from August 31 through September 11, 1987. The leave was approved on July 14, 1987, but was later canceled due to a shortage in manpower and a requirement for emergency maintenance. Mr. Morkal made a second request for 40 hours of leave on September 10, 1987. This request was for the period September 28 through October 2, 1987. The leave was approved by his supervisor

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on September 14, 1987, but was canceled again due to the requirement of an emergency maintenance trip to Nome and Unalakleet, Alaska. Both of the requests for leave were submitted in writing on SF 71 "Application for Leave" forms.

Mr. Morkal's third attempt to take annual leave was in December 1987. This attempt was in the form of an oral request for 48 hours annual leave during the Christmas holidays. On December 20, his supervisor orally "tentatively approved" this request, but it was subsequently denied because Mr. Morkal was sent on another energy maintenance trip. There was no further attempt to reschedule Mr. Morkal's leave.

OPINION

Under 5 U.S.C. § 6304(a) (1982), annual leave which exceeds the accumulation permitted by law (normally 30 days or 240 hours) is forfeited at the beginning of the first full pay period in a year. Forfeited annual leave may be restored under the limited circumstances set out in 5 U.S.C. § 6304(d)(1), which provides:

"(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;

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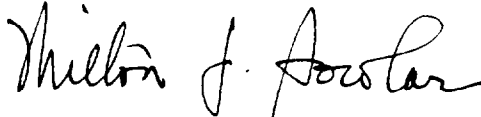
"shall be restored to the employee."

For restoration of leave under subparagraph (B), above, 5 C.F.R. § 630.308 provides that "use of the annual leave must have been scheduled in writing before the start of the third biweekly pay period prior to the end of the leave year."

In William D. Norsworthy, 57 Comp. Gen. 325 (1978), we determined that, when an employee submits a bona fide, formal, and timely request for leave, the agency must approve and schedule the leave either at the time requested by the employee or, if that is not possible because of the agency's workload, at some other time. Failure on the part of the agency to properly schedule requested leave constitutes administrative error. Accordingly, we held that

where an employee demonstrates that, but for an administrative error in failing to schedule requested leave, he would be entitled to restoration of leave under section 6304(d)(1)(B), then such leave may be restored under section 6304(d)(1)(A). See also Joseph Hanyok, B-187104, Sept. 28, 1978.

Here, the record shows that Mr. Morkal met all of the "scheduled in advance" requirements of 5 U.S.C. § 6304(d)(1)(B) and 5 C.F.R. § 630.308, supra, on two occasions. He submitted the proper form in July and September, well before the start of the third biweekly pay period prior to the end of the leave year. Since appropriate requests were submitted, it was the agency's responsibility to schedule Mr. Morkal's leave some time before the end of the leave year and it was an administrative error for the agency not to fulfill this responsibility. Therefore, pursuant to 5 U.S.C. § 6304(d)(1)(A), Mr. Morkal is entitled to restoration of 48 hours of annual leave in the form of a lump-sum payment.^{1/}



Acting Comptroller General
of the United States

^{1/} The Attachment to FPM Letter No. 630-22 provides the following guidance:

"If an administrative error, which resulted in the forfeiture of annual leave, is uncovered after an employee separates from federal employment, if the separation occurs on or after December 14, 1973, the former employee is entitled to a lump-sum payment for the forfeited annual leave."