



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Amos Knight - Forfeiture of Annual Leave
File: B-234528
Date: October 6, 1989

DIGEST

An employee's claim for restoration of forfeited annual leave is denied since the agency's failure to counsel him about possible forfeiture of annual leave does not constitute administrative error under 5 U.S.C. § 6304(d)(1)(A) (1982).

DECISION

This decision is made pursuant to a request by Mr. Amos Knight, through his attorney, for review of a Claims Group settlement denying his claim for restoration of forfeited annual leave.^{1/} The Claims Group denied his claim because he did not meet any of the conditions outlined in 5 U.S.C. § 6304(d)(1) (1982) allowing for restoration of annual leave. For the following reasons, we affirm our Claims Group settlement.

BACKGROUND

Mr. Amos Knight, a civilian employee of the Air Force, submitted an application for retirement on November 12, 1987, with a proposed effective date of January 2, 1988. However, on December 15, 1987, Mr. Knight received a decision from the Equal Employment Opportunity Commission (EEOC) which granted him a retroactive promotion to grade GS-12. Consequently, he withdrew his application for retirement upon notice of the EEOC decision.

Had he retired as planned, Mr. Knight would have received a lump-sum payment for the total annual leave he had accrued. However, following the withdrawal of his retirement application, Mr. Knight forfeited 106 hours of annual leave

^{1/} Settlement Certificate Z-2865594, Sept. 21, 1988.

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in accordance with the limitation established in 5 U.S.C. § 6304(c).

Mr. Knight filed a claim with our Claims Group requesting restoration of the 106 hours of forfeited annual leave. He states that, as the only person in his office, he did not request annual leave for the remainder of 1987 primarily to avoid a backlog of work in the office. In its report, the Air Force asserted that it did not influence Mr. Knight with regard to his utilization of his annual leave and, further, that his leave approving official would have granted him any request for annual leave to avoid forfeiture had Mr. Knight requested it.

Our Claims Group disallowed his claim, stating that he did not meet any of the circumstances outlined in 5 U.S.C. § 6304(d)(1) for restoration of annual leave. Mr. Knight requests that we reconsider our Claims Group settlement. He believes that the Air Force was required under its regulations to counsel him regarding the possible forfeiture of annual leave and that its failure to do so constitutes an administrative error under subsection 6304(d)(1)(A).

OPINION

Under 5 U.S.C. § 6304, annual leave which exceeds the accumulation permitted by law is forfeited at the beginning of the first full pay period in a year. The provisions of 5 U.S.C. § 6304(d)(1) allow for restoration of forfeited annual leave if the forfeiture resulted from administrative error, or if the forfeiture resulted from the exigencies of the public business or the sickness of the employee when the annual leave was scheduled in advance.

What constitutes an administrative error under section 6304(d)(1)(A) in a particular case is a matter for which primary jurisdiction lies with the agency involved, but the failure of an agency to follow a regulation which requires employees to be counseled about possible leave forfeiture, under certain circumstances, constitutes administrative error for the purpose of 5 U.S.C. § 6304(d)(1)(A). John J. Lynch, 55 Comp. Gen. 784 (1986).

In Mr. Knight's case, the Air Force report to our Claims Group examined each of the circumstances allowing restoration in subsection 6304(d)(1) and determined that Mr. Knight did not meet any of them, although the agency failed to state explicitly that an administrative error had not occurred.

As stated previously, the record indicates that at the time Mr. Knight withdrew his retirement application, he was aware of the possible forfeiture of a substantial amount of annual leave not used by the end of the year. In a letter to our Claims Group dated January 1, 1988, he states that at the time he withdrew his retirement application he requested restoration of all "use or lose" leave that would be forfeited at the end of 1987. He also provided reasons in his letter why he chose not to request annual leave at the end of 1987 to avoid forfeiture.

The Air Force regulations cited by Mr. Knight do not require employees to be counseled concerning the possibility of forfeited annual leave. Air Force Regulation 40-630 (C1) (A1-6). Rather, the regulations state that the agency is responsible for informing the employees of their leave balance, the date of possible forfeiture, and the amount of leave potentially forfeitable. In this case, Mr. Knight was aware of the impending forfeiture of a substantial amount of annual leave, and the agency's failure to counsel Mr. Knight in this instance does not provide a basis for claiming that an administrative error occurred.

Therefore, Mr. Knight's claim for restoration of forfeited annual leave is denied, and the settlement of our Claims Group is affirmed.

William J. Jordan
for Comptroller General
of the United States