



Office of the General Counsel

B-245117.4

October 29, 1993

The Honorable Arlen Specter
United States Senator
9400 Federal Building
600 Arch Street
Philadelphia, Pennsylvania 19106

Dear Senator Specter:

This is in further reply to your letter of June 18, 1993, in which you request our substantive findings and views concerning the matters addressed in correspondence from Mr. [redacted], which you enclosed with your letter. Mr. [redacted] is a retired employee of the Department of the Army who claims restoration of 172 hours of annual leave which he forfeited at the close of the 1986 leave year.

Mr. [redacted] case arose as a result of his decision in 1986 related to retiring on disability from his position with the Army. He had requested use of his annual leave over several periods during 1986. However, the record shows that he canceled use of leave during those periods, apparently in contemplation of retirement at the end of the year at which time he could then receive a lump-sum payment for his accrued leave. Instead of retiring at the end of 1986, he elected to participate in the Army's optional-in-lieu of disability retirement program whereby he remained on the agency rolls exhausting his sick leave at full salary for 1-1/2 years before retiring in August 1988. Since he had not used the annual leave to his credit during 1986 which exceeded the maximum 240 hours he was permitted by law to carry over to 1987, he forfeited the 172 hours. He requested that the Army restore that leave, but his request was denied, and he subsequently filed a claim for the leave with our Office.

Mr. [redacted] claim was initially considered by our Claims Group which by settlement Z-2866851, June 7, 1991, denied his claim. Upon Mr. [redacted] appeal of that settlement, we fully reviewed the matter, and in our decision, [redacted], B-245117, Jan. 21, 1992, affirmed the Claims Group's denial. At Mr. [redacted] request, we twice more reviewed the matter and affirmed the denial.

B-45117.2, June 19, 1992, and letter dated September 30, 1992, B-245117.3.

The facts and circumstances involved in Mr. [redacted] claim and Mr. [redacted] arguments were carefully considered in our review of his claim, including the points he makes in the correspondence you forwarded to us. As we indicated in the decisions, referred to above, while Mr. [redacted] apparently submitted a schedule to use his annual leave prior to the expiration of the 1986 leave year and there was nothing to prevent him from using his leave, he canceled use of the leave for reasons other than exigency of public business or sickness as required by 5 U.S.C. § 6304(d)(1) (1988) for restoration of forfeited leave. Thus, as we noted in our June 1992 decision, at the end of 1986 Mr. [redacted] had two options: (1) retire at that time on disability and receive a lump-sum payment for his 172 hours of excess annual leave; or (2) exhaust his sick leave and remain on the rolls of the Department of the Army for over 1-1/2 years, continue to receive his full salary, and continue to accumulate annual and sick leave. Mr. [redacted] chose the latter option. In doing so, however, by operation of law, 5 U.S.C. § 6304, he forfeited the 172 hours of excess annual leave which he had not used in 1986.

As is fully explained in our decisions, in these circumstances, there is no legal basis upon which we may authorize restoration of the 172 hours of annual leave. Of course, as he suggests in the correspondence to you, Mr. [redacted] may pursue his legal remedies in the courts if he so desires.

Copies of our decisions and letter referred to above are enclosed. In accordance with your request, we are also returning the copies of the documents you submitted.

We trust this serves the purpose of your inquiry.

Sincerely yours,

for 

James F. Hinchman
General Counsel

Enclosures

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DIGEST

United States Senator is advised that in two prior decisions of this Office, _____, B-245117, Jan. 21, 1992, and upon reconsideration, _____, B-245117.2, June 19, 1992, the employee's claim for restoration of 172 hours of annual leave which was forfeited during the 1986 leave year was disallowed. It was held that even though the employee may have submitted a schedule for use of annual leave prior to the expiration of the 1986 leave year, his annual leave could not be restored since he canceled the leave requested for reasons other than exigency of the public business or sickness as required by 5 U.S.C. § 6304(d)(1) (1988).