

Mr. Brown
PLM II

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

14256

WASHINGTON, D. C. 20548

FILE: B-196834

DATE: July 15, 1980

MATTER OF: Bob R. Carson - [Restoration of Annual Leave Ceiling]

DIGEST: Employee used 15 hours of annual leave on the basis of erroneous advice from Finance Office and thereby reduced his maximum annual leave carry-over ceiling from 360 hours to 345 hours. There is no authority to restore the employee's former leave ceiling in these circumstances. See B-171716, March 26, 1971.

By a letter dated October 29, 1979, Mr. Pasquale Orlando, a Finance and Accounting Officer at Tooele Army Depot, Tooele, Utah, requested an advance decision regarding the restoration of 15 hours to the leave ceiling of Mr. Bob R. Carson.

The record shows that under 5 U.S.C. 6304(b), based on service outside the United States, Mr. Carson had established an annual leave ceiling of 45 days. Prior to the end of the 1977 leave year the Finance Office at Tooele Army Depot erroneously told Mr. Carson to use 15 hours of annual leave in order to avoid forfeiting the leave. Because use of the 15 hours of leave caused Mr. Carson's maximum annual leave carry-over ceiling to be reduced from 360 hours (45 days) to 345 hours, he has requested that his leave ceiling be restored to 360 hours. In his submission of October 29, 1979, the Finance and Accounting Officer asks whether and under what circumstances Mr. Carson's 360 hour annual leave ceiling may be reinstated.

In B-171716, March 26, 1971 we addressed a similar situation where an employee, on the basis of erroneous advice, used leave which would not have been forfeited and thereby reduced the 360 hour leave ceiling he had established by reason of his service abroad. In that case we noted that there is no authority for restoring an employee's leave ceiling notwithstanding that he may have used leave and thereby reduced his leave

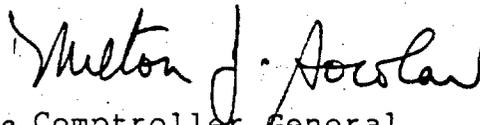
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ceiling as a result of erroneous advice by Government personnel. We pointed out that the United States is not liable for the erroneous actions of its employees even though committed in the performance of their official duties. While 5 U.S.C. 6304(d)(1)(A) provides for restoration of annual leave forfeited under section 6304 as a result of administrative error, that authority does not permit restoration of leave that is used rather than lost. Thus, it does not provide a basis to increase or reinstate an employee's leave ceiling.

Accordingly, Mr. Carson's annual leave ceiling may not be restored to its previous level of 360 hours.



For The Comptroller General
of the United States