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DECISION



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

FILE: B-200243

DATE: April 22, 1981

MATTER OF: Alfred M. Garland - [Lump-sum payment for annual leave] - Transfer to International Organization

DIGEST: Employee of Nuclear Regulatory Commission transferred to international organization under 5 U.S.C. §§ 3581, et seq. effective August 16, 1978, at which time he elected to retain annual leave to his credit pursuant to 5 U.S.C. § 3582(a)(4). On January 22, 1980, also pursuant to 5 U.S.C. § 3582(a)(4) and prior to reemployment, employee requested lump-sum payment for annual leave retained. Consistent with computation provisions of 5 U.S.C. § 3583 and implementing regulations, computation of employee's payment is based on rate of pay attaching to his Federal agency position at time of his request for lump-sum leave payment under 5 U.S.C. § 3582(a)(4), not the date of the transfer.

In this action we consider the request of Mr. Angelo S. Puglise, Director, Division of Accounting, Office of the Comptroller, United States Nuclear Regulatory Commission, for a decision on the claim of Mr. Alfred M. Garland, for a lump-sum payment of annual leave. Specifically, Mr. Puglise has asked what rate of pay should be applied to the computation of Mr. Garland's lump-sum annual leave payment predicated on the following circumstances.

Mr. Garland transferred within the meaning of 5 U.S.C. §§ 3581, et seq. to the International Atomic Energy Agency effective August 16, 1978. At the time of his transfer Mr. Garland elected pursuant to 5 U.S.C. § 3582(a)(4) to retain to his credit all accumulated and current accrued annual leave to which he was then entitled and which would otherwise have been liquidated by a lump-sum payment. Acting in accordance with additional authority provided in 5 U.S.C. § 3582(a)(4) Mr. Garland subsequently delivered a letter to the agency on January 22, 1980, requesting a lump-sum payment for his retained annual leave. As a result of

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these actions, Mr. Puglise asks whether Mr. Garland is entitled to have his lump-sum annual leave payment computed based on his rate of pay at the time of his transfer to the international organization on August 16, 1978, or his established rate at the time of his request on January 22, 1980.)

The rights of Federal employees who transfer to an international organization are set forth in section 3582, title 5, United States Code (1976). Subsection (a) provides that [an employee who transfers to an international organization with the consent of the head of his agency is entitled to certain rights and benefits pertaining to retirement, life and health insurance, compensation for work injuries, and annual leave.] In regard to annual leave subsection (a)(4) specifically provides that the employee is entitled:

"to elect to retain to his credit all accumulated and current accrued annual leave to which entitled at the time of transfer which would otherwise be liquidated by a lump-sum payment. On his request at any time before reemployment, he shall be paid for the annual leave retained. If he receives a lump-sum payment and is reemployed within 6 months after transfer, he shall refund to the agency the amount of the lump-sum payment. This paragraph does not operate to cause a forfeiture of retained annual leave following reemployment or to deprive an employee of a lump-sum payment to which he would otherwise be entitled."

In reviewing the legislative history of the Federal Employees International Organization Service Act, as amended (Pub. L. No. 85-795, 72 Stat. 959, August 28, 1958) House Report No. 2509, August 7, 1958, states as follows in regard to the section presently codified at 5 U.S.C. § 3582(a)(4) (1976):

"Section 4(a)(4) authorizes a transferred employee to retain his accumulated annual leave to his credit rather than to liquidate the annual leave by a lump-sum payment at time of transfer. This section is intended to operate entirely within the framework of the act of

December 21, 1944 (5 U.S.C. 51b), providing for lump-sum payments for annual leave unused at time of separation, and the Annual and Sick Leave Act of 1951. [The Act of December 21, 1944, is presently codified at 5 U.S.C. §§ 5551, et seq.; the Annual and Sick Leave Act of 1951 is presently codified at 5 U.S.C. §§ 6301, et seq.] The section is intended to protect the transferring employee's annual leave rights by reason of those acts; but it is not intended to place the employee in a more advantageous position than he otherwise would be entitled to under those acts."

Under 5 U.S.C. § 5551 (specified employees who are separated from the service are entitled to receive lump-sum payments for accumulated and current accrued annual leave to which they are entitled by statute. The lump-sum payment shall equal the pay the employee would have received had he remained in the service until expiration of the period of the annual leave.) On January 22, 1980, and prior to his reemployment on August 29, 1980, Mr. Garland exercised his specific statutory prerogative under 5 U.S.C. § 3582(a)(4) to receive a lump-sum payment liquidating his existing annual leave account. [The exercise of this right] under 5 U.S.C. § 3582(a)(4) [requires a "computation" under 5 U.S.C. § 3583] which in turn mandates payment in the same manner as if the employee received basic pay at the rate at which it would have been payable had the employee continued in the position in which he was serving at the time of transfer.]

[Therefore, Mr. Garland's lump-sum payment is to be computed] on the basis of 272 hours of annual leave [at the rate] of pay attaching to his Federal agency position [at the time of his request] under 5 U.S.C. § 3582(a)(4). Thus, [the computation is to be based on a rate of pay that includes all established pay adjustments affecting his Federal agency position during the intervening period from the date of his transfer] on August 16, 1978, [to the date of his request] on January 22, 1980. See, in that regard 5 C.F.R. § 352.314 (1979) and, in accordance with 5 U.S.C. § 5551, [the computation of the lump-sum payment shall equal the pay Mr. Garland would have received commencing with the day following his request until the expiration of the period of the annual leave.]

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Mr. Puglise has also presented several additional questions including the applicable date to be applied in handling further requests of this nature. Although this question is hypothetical in nature, we generally believe that [in the absence of a contrary statute, regulation, or agency policy, the date that the employee's request is received in the Federal agency is sufficient to establish the employee's compliance with the provisions of 5 U.S.C. § 3582(a)(4).] We believe that the other additional questions have been dispositively treated in the text of our decision here.

Accordingly, we conclude that Mr. Garland should receive a lump-sum payment for 272 hours of annual leave computed in accordance with the above.


Acting Comptroller General
of the United States