

DECISION

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

10,671

FILE: B-192643

DATE: July 6, 1979

MATTER OF: Gloria Milliner--Backpay and
restoration of leave for period
of suspension]

DIGEST:

Employee's claim for backpay and restoration of leave for period of suspension after her arrest on criminal charges by civil authorities is denied, notwithstanding subsequent dismissal of criminal charges, since there has been no finding by appropriate authority that suspension was unjustified or unwarranted.

Miss Gloria Milliner through her attorney, Stanley H. Miller, Esq., requests reconsideration of our Claims Division settlement of July 14, 1978, which denied her claim for backpay and restoration of leave incident to a period of suspension from her employment by the Department of Health, Education, and Welfare (HEW), Social Security Administration (SSA). The denial of her claim is sustained since neither SSA nor the Federal Employee Appeal Authority (FEAA) of Civil Service Commission (CSC) now Office of Personnel Management has determined her suspension to be unjustified or unwarranted.

The record indicates that Miss Milliner, an SSA employee, was given notice on May 5, 1976, of a proposed indefinite suspension pending investigation of her alleged misconduct after her arrest on certain criminal charges in Baltimore on April 27, 1976. She was placed on indefinite suspension from duty and pay status effective May 10, 1976, and notified of her right of appeal of the suspension action to the FEAA. We are unaware of any appeal to her suspension.

Her suspension remained in effect from May 10, through September 10, 1976, the period for which she claims backpay and leave restoration. She was returned to duty after the criminal charges in Baltimore City were dismissed. Certain charges were still pending in Baltimore County; however, SSA determined that this did not warrant continuation of the suspension.

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After her return to duty, Miss Milliner was advised by letter of November 30, 1976, from SSA, that based on a careful review of her case, there was no basis to conclude that her suspension was either unjustified or unwarranted. In addition, she was advised that there had been no finding by the FEAA that her suspension was unjustified or unwarranted as a result of any appeal, and thus there was no basis to grant her backpay or leave restoration for the period of her suspension. Entitlement to backpay is provided by 5 U.S.C. 5596(b) (1976) which reads:

"(b) An employee of an agency who, on the basis of an administrative determination or a timely appeal, is found by appropriate authority under applicable law or regulation to have undergone an unjustified or unwarranted personnel action that has resulted in the withdrawal or reduction of all or a part of the pay, allowances, or differentials of the employee--

"(1) is entitled, on correction of the personnel action, to receive for the period for which the personnel action was in effect an amount equal to all or any part of the pay, allowances, or differentials, as applicable, that the employee normally would have earned during that period if the personnel action had not occurred * * *." (Emphasis added.)

The appropriate authority in Miss Milliner's case was SSA with the right of appeal to the FEAA. Matter of Richard E. Berger, B-191814, January 15, 1979. The record before us shows no appeal to her suspension either within SSA or to the CSC asserting an unjustified or unwarranted personnel action. At the time involved, the CSC had the function of hearing and deciding appeals to adverse actions, including suspensions for more than 30 days. 5 U.S.C. 7501 (1976). 5 C.F.R. § 752.203 (1976). Berger, supra.

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Since an appropriate authority has not determined that Miss Milliner has undergone an unjustified or unwarranted personnel action incident to her claim, she is not entitled to backpay or leave restoration. The disallowance of her claim by our Claims Division is sustained.


Deputy Comptroller General
of the United States