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DECISION

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

FILE: B-194176

DATE: January 3, 1980

MATTER OF: Eugene M. Wiseman - [Forfeiture of Annual Leave]

DIGEST: While employee's absence was improperly charged to leave without pay rather than to annual leave, and where annual leave in excess of 240 hours was forfeited at the end of the leave year, the record does not indicate that the administrative error caused him to forfeit annual leave subject to restoration under 5 U.S.C. § 6304(d)(1)(A). Since employee would have used and not forfeited the leave in question if it had been properly charged to his leave account, the annual leave was properly substituted for leave without pay and not restored under section 6304(d)(1)(A).

Mr. Eugene M. Wiseman has appealed from the settlement of our Claims Division of his claim for restoration of annual leave. The settlement provided that 60 hours of annual leave should be substituted for leave without pay (LWOP), and that Mr. Wiseman be paid for such amount.

Mr. Wiseman claims that he should have been paid for 64 hours of annual leave rather than 60, and that his pay should have been computed at \$14.43 per hour instead of \$6.87.

For the reasons stated below, we agree with the Claims Division's settlement.

The record discloses that Mr. Wiseman retired from the Defense Contract Audit Agency (DCAA) on June 30, 1973, and was immediately re-hired as a reemployed annuitant until January 26, 1974, at which time his appointment was terminated. During this period he apparently requested and was granted 200 hours of LWOP even though he had 300 hours of accumulated annual leave on January 12, 1974, the end of the 1973 leave year. Under the provisions of 5 U.S.C. § 6304(a) (1970), an employee cannot accumulate more than 240 hours of annual leave for carryover into a succeeding year. Therefore, Mr. Wiseman forfeited 60 hours of annual leave.

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The record does show that 64 hours of annual leave were deducted from Mr. Wiseman's balance of 240 hours. However, that figure represented 72 hours of annual leave that Mr. Wiseman took during the pay period following the end of the leave year, January 13 to January 26, 1974, with a credit for an additional 8 hours of leave earned during that pay period, resulting in a net deduction of 64 hours. Mr. Wiseman had already forfeited the 60 hours of annual leave under the provisions of the statute at the time that the 64 hours of leave that he used was deducted. Therefore, the figure of 60 hours used in our Claims Division settlement is correct.

Based on its determination that Mr. Wiseman should not have been carried in an LWOP status when he had annual leave subject to forfeiture, our Claims Division advised DCAA that the 60 hours of leave otherwise subject to forfeiture should be substituted for 60 hours of LWOP taken during that leave year. That determination is consistent with our holdings in 22 Comp. Gen. 178 (1942) and 23 *id.* 677 (1944). Mr. Wiseman contends, however, that the annual leave in question should have been restored to his leave account after the end of the 1973 leave year under the following provisions of 5 U.S.C. § 6304(d)(1) as added by subsections 3(2) of Pub. L. No. 93-181, 87 Stat. 705 (1973):

"Annual leave which is lost by operation of this section because of--

"(A) administrative error when the error causes a loss of annual leave otherwise accruable after June 30, 1960;

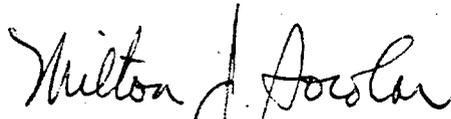
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shall be restored to the employee."

If restored under this provision, the leave would have been included in his lump-sum payment upon separation and he would have been compensated at the \$14.43 per hour rate of pay he was receiving at the date of separation, without deduction of the amount of his retirement annuity, as required by 5 U.S.C. § 8344. Because the leave was instead substituted for LWOP he was paid for the 60 hours at the \$6.87 rate he received as a reemployed annuitant determined on the basis of the rate of pay for his position, reduced by the amount of his annuity.

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What constitutes administrative error under 5 U.S.C. § 6304(d)(1)(A), is a matter within the primary jurisdiction of the agency involved. 55 Comp. Gen. 784 (1976). However, for an administrative error to form the basis for restoration of leave under this authority, it must have been a direct cause of the forfeiture of leave. 58 Comp. Gen. 507 (1979). While a mistake of law or fact that might be characterized as an administrative error resulted in Mr. Wiseman being carried in an LWOP status when his absence should have been charged to annual leave, that mistake did not result in a forfeiture in the sense contemplated. Had it not occurred, he would have taken the 60 hours of annual leave during the period of his reemployment and would have forfeited nothing at the end of the leave year. Under the particular circumstances in Mr. Wiseman's case, the Claims Division properly determined that the 60 hours of annual leave should be substituted for leave without pay, thereby avoiding any problem of forfeiture. For this reason we find no basis to consider the leave as subject to restoration under 5 U.S.C. § 6304(d)(1)(A) and conclude that DCAA properly compensated him for the substituted 60 hours of annual leave at his rate of pay as a reemployed annuitant, reduced by the amount of his annuity.


For The Comptroller General
of the United States