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DECISION



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

FILE: B-195562

DATE: June 6, 1980

MATTER OF: Laurence H. Holmes -
[Restoration of annual leave]

DIGEST: Employee who was on notice that leave and earnings statements reflected erroneously reduced annual leave balance is not entitled to restoration of leave forfeited at end of leave year. Determination of administrative error is within primary jurisdiction of agency involved and AID's finding that forfeiture was not attributable to error in leave and earnings statements is consistent with requirement of 5 U.S.C. 6304(d)(1)(A) for restoration of leave that administrative error caused the forfeiture.

By letter dated February 28, 1979, Mr. Laurence H. Holmes has requested reconsideration of our Claims Division's determination of January 4, 1979, that he is not entitled to restoration of annual leave under 5 U.S.C. 6304(d).

In disallowing Mr. Holmes' claim for restoration of 163 hours of annual leave, which he claimed to have forfeited at the end of the 1966 leave year, our Claims Division found that he used rather than forfeited all but one hour of the leave in question, and that that single hour of leave was not subject to restoration. The leave and earnings statements (Form 7-193) furnished to Mr. Holmes failed to reflect charges for 168 hours of annual leave taken in the fall and winter of that year and thus incorrectly indicated a year-end leave balance in excess of the 360 hours he was entitled to carry forward into the next leave year. However, because official leave records (Form FS-411) properly reflected charges to leave for the 1966 leave year and showed a year-end balance of 361 hours, our Claims Division found that Mr. Holmes forfeited only one hour at the year's end and found no merit to his request for restoration of leave.

On appeal, Mr. Holmes has explained that his request for restoration of annual leave in fact pertains to leave forfeited at the end of the 1967 leave year. Mr. Holmes states that the delay in deducting annual leave on his 1966 leave and earnings

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statements resulted in an apparent forfeiture of approximately that amount of leave at the end of the 1966 leave year and, therefore, that the belated deduction of that leave on his 1967 leave and earnings statements had the effect of charging him twice for the same leave. As a consequence, he claims that the leave balance reflected on his leave and earnings statements for 1967 was considerably below his actual leave balance. He states that because his leave and earnings statements did not show that he had any "use or lose" leave to his credit in 1967 and because of a demanding workload, he was not allowed to take leave during the 1967 leave year. As a result, he forfeited 158 hours of annual leave at the end of the 1967 leave year.

Mr. Holmes requested restoration of leave under the following authority of 5 U.S.C. 6304(d)(1)(A):

"(d)(1) 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;

* * * * *

shall be restored to the employee."

The restoration request was denied by the Agency for International Development (AID), Mr. Holmes' employing agency, on the basis of circumstances indicating that in the summer of 1967 he was aware of the error in his leave and earnings statements and of the fact that his leave balance for 1967 was in excess of 360 hours. Specifically, AID found:

"* * * your file shows that a memorandum dated August 28, 1967 was forwarded to Mr. William Acton, Controller, USAID/Athens which contained a leave audit covering the 1966 leave year and up through the pay period ending July 15, 1967. This leave audit showed a balance of 444 hours annual leave to your credit as of July 15, 1967. Consequently, notwithstanding the erroneous balances shown on the SEL's (Form AID 7-193) it is evident that you

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were maintaining a ceiling of 360 and was aware of the annual accruals of 6 hours each pay period. The record shows you only used eight hours of annual leave in 1967 and should have known your own availability of leave."

Essentially AID concluded that the forfeiture did not occur as the result of administrative error. Objecting to AID's conclusion, Mr. Holmes points out that his leave and earnings statements did in fact reflect an erroneously reduced leave balance.

What constitutes an administrative error under 5 U.S.C. 6304(d)(1)(A) in a particular case is a matter for which primary jurisdiction lies with the agency involved. 55 Comp. Gen. 784 (1976). While AID does not dispute the fact that the leave and earnings statements were inaccurate, its determination that he is not entitled to restoration of leave turns on the fact that Mr. Holmes was on notice of the discrepancy in sufficient time to have scheduled his excess leave and, thus, that error cannot be said to have caused the forfeiture in question. In this regard, the agency correctly interprets 5 U.S.C. 6304(d)(1)(A) as authorizing restoration of leave only in those cases where the administrative error causes the forfeiture to occur.

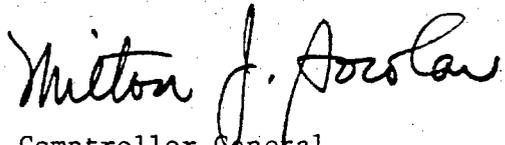
Mr. Holmes' own statement confirms that he knew the leave balance reflected on his leave and earnings statements was in error and suggests that he initiated action to reconcile his leave account. However, contrary to AID's statement that he was on notice in the summer of 1967 that he had annual leave to use or lose, Mr. Holmes states that his supervisor was assured that his leave and earnings statements, reflecting the erroneously reduced annual leave balance, were accurate.

In deciding claims, this Office does not conduct adversary hearings but, rather, operates on the basis of the written record presented by the parties. Where the record before this Office contains a dispute of fact which cannot be resolved without an adversary proceeding, it is our longstanding practice to resolve such dispute in favor of the Government. Matter of William C. Hughes, B-192831, April 17, 1979. Thus, we are obliged to accept AID's finding that Mr. Holmes was on notice of the error in his leave balance.

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We find no basis in the record before us to override AID's determination that the forfeiture of annual leave suffered by Mr. Holmes at the end of the 1967 leave year was not caused by the error in his leave and earnings statements and, thus, is not subject to restoration under 5 U.S.C. 6304(d)(1)(A).

There is some indication in the record that Mr. Holmes' inability to take leave during 1967 may have been attributable, at least in part, to the pressures of Government business. While exigencies of the public business now provide a basis under 5 U.S.C. 6304(d)(1)(B) for restoration of leave, that authority extends only to leave forfeited after December 13, 1973.



For the Comptroller General
of the United States