

DECISION



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

60542

FILE:

B-184002

DATE: FEB 19 1976

98582

MATTER OF:

John J. Lynch - Restoration of Annual Leave
Due to Administrative Error

DIGEST:

Employee retired effective December 31, 1974, and received a temporary appointment effective January 1, 1975, not to exceed June 30, 1975. Since there was no break in service, the employee's annual leave balance was transferred to his new appointment and he forfeited 80 hours of annual leave at end of leave year pursuant to 5 U.S.C. § 6304. Agency is requested to determine whether it violated mandatory requirement to advise employee he would forfeit annual leave if he accepted temporary appointment without break-in-service. If such violation occurred, leave is for restoration under 5 U.S.C. § 6304(d)(1)(A).

This decision is made pursuant to a request by John J. Lynch, a former employee of the Department of the Army, that we review Settlement No. Z-2576807, April 25, 1975, wherein our Transportation and Claims Division (now Claims Division) disallowed his claim for an additional lump-sum payment for unused annual leave.

Mr. Lynch retired from the Department of the Army effective December 31, 1974. At that time he had an annual leave balance of 560 hours and a maximum annual leave carryover of 480 hours established under 5 U.S.C. § 6304(c) (1970). Then Mr. Lynch received a temporary appointment effective January 1, 1975, not to exceed June 30, 1975. There was no break in service and Mr. Lynch's leave balance was transferred to his new position. See 33 Comp. Gen. 591 (1954) and 36 *id.* 209 (1956). Accordingly, no lump-sum payment was made for the 560 hours to his credit. Instead, at the end of the pay period on January 11, 1975, he forfeited 80 hours of annual leave when his balance was reduced to the 480-hour carryover limit established in accordance with 5 U.S.C. § 6304(c).

Mr. Lynch states that if he had not accepted the temporary appointment upon his retirement he would have received a lump-sum payment for the entire 560 hours of annual leave to his credit instead of forfeiting 80 hours of annual leave. He, therefore, requests that we reconsider our settlement of April 25, 1975, which disallowed his claim. Mr. Lynch believes that the Army's failure to advise him that he would forfeit 80 hours of annual leave constitutes an administrative error for the purpose of 5 U.S.C. § 6304(d)(1)(A) (Supp. III, 1973).

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In its letter of March 13, 1975, the Army admits that it failed to advise Mr. Lynch of such forfeiture if he did not use the leave by the end of the leave year. However, neither in the denial of the claim by the Army nor the subsequent denial by our Transportation and Claims Division was the application of the provisions of 5 U.S.C. § 6304(d)(1)(A) raised. That provision reads as follows:

"(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."

What constitutes an administrative error under section 6304(d)(1)(A) in a particular case is a matter for which primary jurisdiction lies with the agency involved. B-171947.65, December 13, 1974, and B-182229, November 7, 1974. The Army has made no determination under the quoted statute concerning whether Mr. Lynch's leave was forfeited due to an administrative error. However, we note that decisions of our Office have construed an administrative error as the failure of an agency to carry out written administrative regulations having mandatory effect for the purpose of correcting erroneous pay rates, etc. 31 Comp. Gen. 15 (1951); 34 id. 380 (1955); 39 id. 550 (1960); and 53 id. 926 (1974). In this connection, we have also held that, when counseling an employee is required by administrative regulations, such as in cases concerning retirement, failure to give correct advice on such matters as the employee's service credits constitutes an administrative error. B-174199, December 14, 1971.

In view of the above we are instructing our Claims Division to obtain an additional administrative report. If the Army violated a regulation which required that employees be counseled concerning an impending forfeiture of annual leave under the above-described circumstances, then Mr. Lynch's forfeited annual leave may be restored under the provisions of 5 U.S.C. § 6304(d)(1)(A). If the report indicates that no administrative error was made, the disallowance will be sustained.

R.F. KELLER

Deputy Comptroller General
of the United States