

**DOCUMENT RESUME**

02565 - [A1652655]

[Annual Leave Restoration Due to an Administrative Error].  
B-186484. June 7, 1977. 3 pp.

Decision re: Susan J. Salisbury; by Robert P. Keller, Deputy  
Comptroller General.

Issue Area: Personnel Management and Compensation (300).

Contact: Office of the General Counsel: Civilian Personnel.

Budget Function: General Government: Central Personnel  
Management (805).

Organization Concerned: Defense Intelligence Agency.

Authority: (P.L. 93-181; 87 Stat. 705; 5 U.S.C. 6304). Defense  
Intelligence Agency Regulation 22-5.

The Comptroller of the Defense Intelligence Agency asked whether he could restore an employee's annual leave lost through forfeiture. The unusual circumstances of employee's workload, preventing her from taking annual leave in addition to compensatory leave, did not constitute an administrative error, and annual leave should not be restored. (OM)

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**DECISION**



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

**FILE:** D-186484

**DATE:** June 7, 1977

**MATTER OF:** Susan J. Salisbury - Annual leave  
restoration - Administrative error

**DIGEST:** Employee in 1971 was required to use 251½ hours of compensatory time before using annual leave. Because of her workload, she did not request that annual leave be scheduled and as result she forfeited 208 hours of annual leave. Agency regulation required supervisors to schedule annual leave for each employee to avoid forfeiture, but also required compensatory time to be taken before annual leave. Unusual circumstances which resulted in lost leave do not provide administrative error basis for restoration of leave.

The Comptroller of the Defense Intelligence Agency asks whether he may restore annual leave lost through forfeiture to Miss Susan J. Salisbury under the following circumstances.

Miss Salisbury was required to work 251½ hours overtime during the leave year 1971, for which she took compensatory time off. However, because of her workload it was not possible for her to schedule and take any annual leave in addition to taking compensatory time off. Therefore, in accordance with the provisions of 5 U.S.C. § 6304, Miss Salisbury was required to forfeit 208 hours of annual leave. In seeking restoration of the forfeited leave, Miss Salisbury alleges administrative error within the meaning of 5 U.S.C. § 6304(d)(1)(A) (Supp. III, 1973).

In support of Miss Salisbury's contention that her supervisor committed administrative error, the Comptroller cites the following provision of DIA Regulation 22-5, "Leave Administration," November 3, 1969, the governing regulation which was in effect throughout 1971:

**"4. RESPONSIBILITIES FOR LEAVE ADMINISTRATION**

\* \* \* \* \*

**"b. Supervisors. ... Supervisors authorized to approve leave will:**

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"(3) Schedule annual leave on a year-round basis to insure that all employees are given an opportunity for a reasonable vacation period and to use leave they would otherwise forfeit."

The Comptroller also cites paragraph 5.e.(5) of DIA Regulation 22-5 which at that time required certifying officers to charge leave to an employee's compensatory leave account until it was exhausted before any leave could be charged to annual leave. Subsequently, on February 15, 1973, in recognition of the detrimental effect that this regulation was having in causing employees, such as Miss Salisbury, to forfeit annual leave, the following footnote was added to paragraph 5.e.(5):

"5.e.(5) ... NOTE: If there is not sufficient time remaining in the leave year to exhaust both an employee's compensatory leave balance and his excess annual leave, annual leave will be charged without regard to the compensatory leave balance, and overtime will be paid for compensatory leave ..."

The Comptroller asks whether the regulation, as it existed before the 1973 amendment, in requiring use of compensatory time before annual leave, constituted administrative error under 5 U.S.C. § 6304. He also asks whether it was administrative error for the supervisor to require such an extraordinary amount of overtime or to fail to schedule leave so as to avoid forfeiture.

As to whether Miss Salisbury's supervisor's failure to schedule annual leave so as to allow her to avoid a forfeiture as required by DIA Regulation 22-5 constituted "administrative error," we think the answer must be in the negative.

The provision of law in question, 5 U.S.C. § 6304(d)(1), was added to title 5 of the United States Code by Public Law 93-181, approved December 14, 1973, 87 Stat. 705. It provides in pertinent part as follows:

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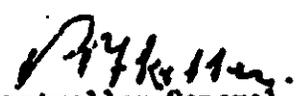
"Annual leave which is lost by operation of this section because of--

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

Under the DIA Regulation 22-5 which was in effect throughout 1971, the supervisor was charged with the responsibility to schedule requested annual leave that would otherwise be forfeited. Here, however, the employee admits that she never applied for the leave because of her workload which made it impossible to take any annual leave in addition to her compensatory time off. Thus, the unusual circumstances, and not the supervisor's failure to schedule leave, caused the forfeiture. There was no error because it was impossible for the employee to take annual leave in addition to compensatory time off. Nor do we find error in requiring a large amount of overtime for Miss Salisbury. The scheduling of overtime is a matter of administrative discretion, and there is no indication of any error in its scheduling in this case.

The error, if any, must come from the DIA regulation that, in 1971, required compensatory time to be exhausted before annual leave could be used. The agency's regulation is presumed to be valid, and the Comptroller does not contend otherwise. Although it was revised in 1973, the regulation was valid until then and was properly applied to Miss Salisbury in 1971.

In view of the foregoing, it is our opinion that Ms. Salisbury does not qualify under the "administrative error" provisions of 5 U.S.C. § 6304(d)(1)(A) for the restoration of annual leave forfeited at the end of the 1971 leave year.

  
Deputy Comptroller General  
of the United States