



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Larry R. Taylor

**File:** B-252287

**Date:** May 28, 1993

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### DIGEST

1. Employee's claim for night shift differential and holiday pay as part of lump-sum leave payment upon separation is denied. Employee did not qualify for night shift differential at the time of his separation, and language of statute providing for payment of lump-sum leave is clear and unambiguous and specifically excludes holiday pay.

2. Agency paid backpay to employee for Sunday premium pay, but period of backpay exceeded 6 years. However, interest on backpay should have been computed retroactively since final action on the claim was not taken until after the effective date of the change in the statute (December 22, 1987) providing for such interest. 5 U.S.C. § 5596 (1988). Interest payments should be offset by erroneous backpay payments that exceeded the 6-year limitation in 31 U.S.C. § 3702(b) (1988). Claims Group's action is affirmed in part and overruled in part.

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### DECISION

Mr. Larry R. Taylor, a former employee of the Department of the Navy, Naval Submarine Base, Bangor, Washington, appeals our Claims Group Settlement.<sup>1</sup> The settlement determined that Mr. Taylor was not entitled to additional holiday pay, additional lump-sum leave payment to include night shift differential pay, or additional interest on Sunday premium backpay computed retroactively.

As a result of a reorganization and subsequent reduction-in-force, Mr. Taylor was terminated from his position at the Naval Submarine Base on October 28, 1987. Mr. Taylor received a lump-sum payment for accrued annual leave on December 15, 1987. He has disputed the amount of the payment on the basis that it should have included holiday pay, and a night shift differential. In addition, his employing

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<sup>1</sup>2-2867392, February 14, 1992.

agency determined that Mr. Taylor was entitled to a retro-active adjustment for Sunday premium pay from 1981 through 1987, and he was paid interest on this amount computed from January 12, 1988, to February 16, 1990.<sup>2</sup> Mr. Taylor claims additional interest covering the years 1981 through 1987.

Both the agency and our Claims Group denied Mr. Taylor's claim for holiday pay on the basis that the statutory provision providing for a lump-sum leave payment specifically prohibits such payment.<sup>3</sup> The night shift differential was denied on the basis that Mr. Taylor was not assigned to a shift that provided for such payment at the time of his separation. The Claims Group settlement also determined that the interest was computed correctly.

On reclaim, Mr. Taylor contends that the Navy continues to include holiday pay in lump-sum leave payments, and that it is unfair to change an employee's shift prior to receipt of a reduction-in-force notice to avoid payment of night shift differential.

The statutory provision that provides for a lump-sum payment for accumulated and accrued leave on separation, 5 U.S.C. § 5551(a) (1988), provides that "the period of leave used for calculating the lump-sum payment shall not be extended due to any holiday occurring after separation." The language of the statute is clear and unambiguous, and neither the General Accounting Office nor any other agency has the authority to waive its provisions. James C. Wilson, 62 Comp. Gen. 19 (1982). Accordingly, Mr. Taylor's claim for reimbursement for holiday pay is denied.

As to inclusion of a night shift differential in Mr. Taylor's lump-sum payment, the agency states that he was assigned to a day shift schedule for 3 months prior to his separation and could not have earned shift differential because the night shift had been discontinued. Mr. Taylor has not presented any evidence to rebut this statement by the agency, but merely alleges that such an action by the agency is unfair. Further, the agency action corresponds with the Office of Personnel Management's guidance in the Federal Personnel Manual (FPM 532-1, Subch. 8-4,c(4)), which states that when a night shift has been formally canceled and the employee has been regularly scheduled for continuous day shift work on or before the date of separation, the lump-sum leave payment will be computed on the day rate.

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<sup>2</sup>We are unable to determine from the record the rationale for the starting date of the computation.

<sup>3</sup>5 U.S.C. § 5551(a) (1988).

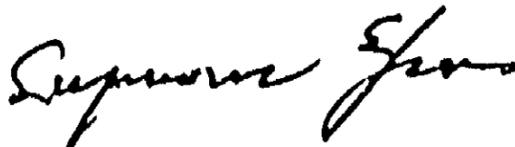
Accordingly, Mr. Taylor's claim for night shift differential is denied.

However, we agree with Mr. Taylor's contention that the interest computation for his Sunday premium backpay should have included a retroactive adjustment. A final determination in his case was made on February 16, 1990, well after the date (December 22, 1987) upon which the amendment to the Back Pay Act, 5 U.S.C. § 5596 (1988), authorizing interest became effective. See Interest on Backpay, 70 Comp. Gen. 560 (1991); 5 C.F.R. § 550.806(h) (1993).

We also note, however, that Mr. Taylor's adjustment for Sunday premium pay was computed erroneously since it exceeded the 6-year limitation period in 31 U.S.C. § 3702(b) (1988). Prior to the change in our regulations in 4 C.F.R. § 31.5 (1993), on June 15, 1989, the time period for filing a claim could only be tolled by filing it with the General Accounting Office. Frederick C. Welch, 62 Comp. Gen. 80 (1982). Therefore, Mr. Taylor's backpay should not have been allowed prior to June 15, 1983, 6 years prior to the change in our regulation. David A. Turner, B-251043, Feb. 8, 1993. Thus, Mr. Taylor has been overpaid to the extent that his backpay included paydays prior to that date. Again, as in the case of the holiday pay, the statute and implementing regulation has the force and effect of law and this Office cannot waive the provision.

Our Claims Group's settlement is affirmed in part and overruled in part. Mr. Taylor's interest payment may be recomputed in accordance with the above. In the event that the overpayment exceeds his interest entitlement, such amount may be considered for waiver under the provisions of 5 U.S.C. § 5584 (1988).

Sincerely yours,



James F. Hinchman  
General Counsel

