



United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-265967

November 28, 1995

The Honorable Bob Filner
Member, United States
House of Representatives
333 F Street, Suite A
Chula Vista, CA 91910

Dear Mr. Filner:

This further responds to your August 8, 1995, letter on behalf of Ms. Corazon Trilles (your case #4381), which enclosed a copy of a July 26, 1995, letter to your office from Ms. Trilles requesting reconsideration of our Claims Group settlement, Z-2869660, July 11, 1995, denying Ms. Trilles's request for reinstatement of her nonappropriated fund leave accrual, lost incident to her employment with an appropriated fund activity.

Neither the facts nor the law are in dispute. Ms. Trilles resigned from her employment with the Navy Exchange, a nonappropriated fund activity in San Diego, California, on Tuesday, November 13, 1990, to accept a civilian position with the Department of Defense at the Naval Hospital in San Diego, an appropriated fund position, effective the following Monday, November 19, which resulted in a 6-day break in service. Prior to November 5, 1990, there was no authority to permit an employee to carry leave accrued in a nonappropriated fund position with him or her upon employment in an appropriated fund position. However, shortly before Ms. Trilles began her employment at the Naval Hospital, on November 5, 1990, a statutory change was enacted to permit employees of nonappropriated fund activities to transfer their accrued sick and annual leave balances to positions in the Department of Defense or Coast Guard if the employee moves to the new position "without a break in service of more than 3 days." 5 U.S.C. § 6308(b). As Ms. Trilles acknowledges, since her service break exceeded 3 days, under this law, she is not entitled to have her accrued leave from her former position reinstated to her current leave accounts.

Ms. Trilles states, however, that, at the time she transferred, she was told that none of her benefits could be carried over to her new position, suggesting to her that the personnel who advised her were unaware of the change in the law. Further, she asserts that if the personnel at the Naval Hospital had been aware of the law, and had advised her of its provisions, she could have arranged to start her new job within the 3-day limit. Ms. Trilles argues that she should not have to pay the consequences for the Navy's failure to properly advise her.

While it is unfortunate that the agency personnel who advised Ms. Trilles may not have been aware of the recent statutory change, the well-established rule is that the erroneous advice of agency personnel does not provide a basis to allow a claim that otherwise is barred by law. Bryon A. Hartley, B-252488, June 17, 1993, and cases cited therein. Accordingly, there is no authority which would permit us to allow Ms. Trilles's claim.

We trust this serves the purpose of your inquiry.

Sincerely yours,

/s/Seymour Efros
for Robert P. Murphy
General Counsel

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DIGEST

A Department of Defense civilian employee who moved to her current position from a position with a nonappropriated fund activity after a break in service of more than 3 days may not have her leave accrual account from the former position reinstated to her current position. Notwithstanding that she may have received erroneous advice from agency personnel, the applicable law permits the transfer of leave accrual balances between nonappropriated fund activities and the Department of Defense or Coast Guard only if the employee moves without a break in service of more than 3 days. 5 U.S.C. § 6308(b). The erroneous advice of agency personnel may not serve as the basis of a claim otherwise barred by law. Bryon A. Hartley, B-252488, June 17, 1993.