

mr. Kirkpatrick

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GAO

United States General Accounting Office
Washington, DC 20548

Office of
General Counsel

In Reply
Refer to: B-202913 (THK)

June 3, 1981

Mr. Jacob J. Greenman
45 Ocean Avenue
Monmouth Beach, N.J. 07750 ~~Do not make available to public reading~~

Dear Mr. Greenman:

By letter of April 8, 1981, you requested to know whether you are entitled to pay for the George Washington Birthday holiday, falling on February 16, 1981. You believe that you may be entitled to pay on this holiday because you separated from the service on January 10, 1981, with 448 hours of annual leave to your credit, which if used after your separation, would have continued beyond February 16, 1981. However, the Finance and Accounting officer, U.S. Army Communications and Electronics Command, Fort Monmouth, New Jersey, denied you payment for the holiday.

You state that you retired from the Government on August 30, 1980, and on that day became a reemployed annuitant until your separation from the service on January 10, 1981. You believe your entitlement should be governed by the law in effect at the time you retired, that is, August 30, 1980.

It is true that if you had separated from the service on that date, any lump sum leave owed to you would have included pay for any holiday falling within the projected period of your lump-sum leave hours, just as though you had continued on the rolls of your agency for the duration of the leave. See 38 Comp. Gen. 869 (1959).

However, section 402 of the Omnibus Reconciliation Act of 1980, Pub. L. 96-499, 94 Stat. 2605, December 5, 1980, provides:

[Entitlement to Holiday Pay]



5-17150

B-202913

"ELIMINATION OF CREDIT FOR HOLIDAYS IN
CALCULATING LUMP-SUM LEAVE PAYMENTS

" Sec. 402 (a) Section 5551(a) of title 5, United States Code, relating to lump-sum payment at separation for accumulated leave, is amended by adding at the end thereof the following new sentence: 'The period of leave used for calculating the lump-sum payment shall not be extended due to any holiday occurring after separation.'

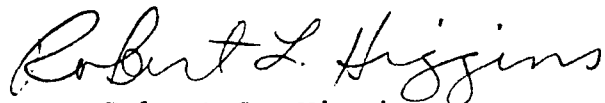
(b) The amendment made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to employees separating from the service on or after such date."

This measure eliminates pay for any holiday within the extension of the leave period used to calculate lump-sum leave payment. Further, elimination of the payment applies to all employees "separating from the service" on or after the date of enactment, that is, December 5, 1980.

Since you did not separate from the service until after the date of enactment, we believe it is immaterial that your retirement was effective before that date. Because your separation was after enactment, your lump-sum leave payment is governed by section 402(a) so as to exclude pay for the George Washington Birthday holiday falling on February 16, 1981.

We hope that the foregoing information is responsive to your inquiry. If you wish to pursue the matter, you may submit a claim in writing to our Claims Group in accordance with the procedures set out in Part 31 of Title 4, Code of Federal Regulations.

Sincerely yours,



Robert L. Higgins
Assistant General Counsel