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B-39695 March 27, 1945

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Public Printer, Government Printing Office.

My dear Mr. Giegengack:

I have your letter of January 31, 1945, as follows:

"Reference is made to the attached Notices of Exception which in total involve $107.50 and concern salsry overpayments made to Harry K. Norris, former employee of this Office.

"The records of this Office show that Harry K. Norris was employed as a temporary carpenter during the period of November 27, 1940 to April 30, 1941, with compensation at the rate of $1,32 per hour. During the period of his employment, he was granted 12 days, 5 hours, and 30 minures ammual leave and 5 days' sick leave. As this employee's appointment was of a temporary nature and he rendered only 2 full months of continuous service, under the leave regulations, his leave accrual was only for the 2 full months of service, which acounted to 5 days annual leave and 2 1/2 days sick leave, whereas he was grnated on different days throughout the period, 12 days, 5 hours, and 30 minutes annual leave and 5 days' sick leave. This action resulted in overpayment for leave granted to which he was not entitled under the leave regulations in the amount of 10 days, 1 hour, and 30 minutes or the equivalent in dollars of $107.58

"During the course of post audit of the pay roll on overpayment in the amount of $17.82 was discovered and a notice with explanation was sent to the former employee requesting that a refund of this amount be made. A letter was received from this employee acknowledging receipt of our letter staating that refund of $17.82 would be made by the 16th of the following month. No amount, however, was received on the 16 of July or thereafter, so a further communication was forwarded to this employee and the second reply was reveived from him stating that a refund would be made. Not having received the refund after receipt of this letter, another letter was forwarded to Mr. Norris under date of August 22, 1941, giving him until September 2, 1941 and since that date, no further reply has been received. This Office then notified your Office of the indebtedness and requested your attention in order to assist in the collection of this overpayment. Further developments were disclosed by your Office to the effect that in view of Mr. Morris' appointment being of a temporary nature, the total overpayment involved was in the amount fo $107.58 instead of $17.82.

"The erroneous disbursements were brought about by an error of an employee of

this Office in maintaining the leave record of this employee, and the misinterpretations of Section 14 of the leave regulations which read inpart as follows: 'Temporary employees shall be granted 2 1/2 days leave for each full monty of service. Afater the first month of service, such leave may be credited at the beginning of the monty in which it accrues,' and the failure of the employee to recall Decision of the Comptroller General to the effect that temporary employees are required by these regulations to work continuously thiryt day before granting leave. The employee was not granted leave in excess of that which he would have been entitled to had he worked a 30-day continuous period.

"Under the circumstances, it appears that the Disbursing Office as well as the Certifying Office in this case acted in good faith and had no practical means of ascertaining that an overpayment existed in any of the pay rolls involved. Relief is therefore sought under the good faith rule and misinterpretation of the regulations to remove the exceptions stated by the attached notices and if possible establish a debt record against Harry K. Norris who is now serving in the Armed Forces of the United States."

Payments were made to Harry K. Norris, as follows: Vouchers 7612, February 1 to 15, 1941, $105.60 for 80 hours; 8726, February 16 to 28, 1941, $93.39 for 70-3/4 hours with 9-1/4 hours without pay; 8727, March 1 to 15, 1941, $63.36 for 48 hours with 32 hours without pay; and 9885, April 1 to 15, 1941, $52.80 for 40 hours with 40 hours without pay. Exceptions totaling $107.58 were states against these vouchers because annual and sick leave taken by the employee during the period of his employment exceeded his leave credits by 10 days, 1 hour, and 30 minutes, which at $1.32 per hour equals the amount suspended. This excess leave was erroneously credited the employee, who was serving under a temporary appointment, during months in which a full month's service was not performed, it having been held that, under the actos of March 14, 1936, 49 Stat. 1161, 1162, as amended, and Executive orders issued pursuant thereto, temporary employees are not entitled to annual and sick leave credit for a fractional month's service. 16 Comp. Gen. 934; id. 1039; 20 id. 827.

It is admitted that error occurred in maintaining the leave record of the employee and in the application of the law and the Executive orders. Attempts to effect collection of the overpayments have been ineffectual and relief has been requested on the basis of good faith on the part of the certifying and disbursing officers because of a lack of means of ascertaining that overpayments existed.

Since the Government Printing Office is under the legislative branch of the Government, and as Executive Order 6166 dated June 10, 1933, which places greater responsibility upon certifying officers, is applicable to the executive branch of the Government only, the terms of said order as it relates to the accountability of the certifying officer may not be regarded asa for application to ghe Government Printing Office. For that reason, no charge has been raised against the certifying officer. However, credit was withhold for the erroneous payments in the accounts of the disbursing officer.

An examination of the involved pay rolls discloses no information regarding the granting of annual leave to the employee. Neither does there appear anything thereon to have put the disbursing officer upon notice that the employee was not entitled to payment as certified on the pay roll submitted to him. The facts with respect to the erroneous granting of leave was disclosed in reports from

your office dated October 3, 1941, November 22, 1941, January 23, February 24, and March 27, 1942.

The act of August 23, 1912, 37 Stat. 375, provides:

"Hereafter the administrative examination of all public accounts, preliminary to their audit by the accounting officers of the Treasury, Shall be made as contemploted by the so-calle Dockery Act, approved July thiry-first, eighteen hundred and ninety-four, and all vouchers and pay rolls shall be prepared and examined by and through the administrative heads of divisions and bureau in the executive departments and not by the disbursing clerks of said departments, except those vouchers heretofore prepared outside of Washington may continue to be so prepared and the disbursing officers shall make only such examination of vouchers as may be necessary to ascertain whether they represent legal claims against the United States."

The act of February 20, 1923, 42 Stat. 1277-8, authorizing a desbursing officer for the Government Printing Office for the first time (the Public Printer theretofore having been charged with the disbursement of funds for that agency), provides as follows:

" * * * That the disbursing clerk of the Government Printing Office hereafter shall be charged with the receipt and disbursement of all moneys for said office in accordnace with the provisions of law relating to the Public Printer and other disbursing officers of the Government, Under such bond and rules as the Secretary of the Treasury shall prescribe." (Emphasis supplied.P

Accordingly, irrespective of whether the Government Printing Office be considered a part of the legislative or a part of the executive branch of the Government, the disbursing officer is governed by all provisions of law applicable to disbursing officers on July 1, 1923, the effective date of the act of February 20, 1923 (see 2 Comp. Gen. 535), which would thus make the act of August 23, 1912, supra, applicable to the disbursing officer of the Government Printing Office. In respect of the 1912 statute it was held in 4 Comp. Gen. 991, as follows (quoting the first paragraph of the syllabus):

"Under the act of August 23, 192, 37 Stat. 375, Disbursing officers are required to make only such examination of vouchers as may be necessary to ascertain whether they represent legal claims against the United States. Credit will accordingly be allowed in the accounts of disbursing officers for illegal payments made on vouchers properly certified and approved by administrative officers and concluding nothing on the face thereof that would put the disbursing officer on notice that payments thereon would be illegal."

Since the disbursing officer did not have knowledge of the facts but relied upon the certification of the pay rolls as submitted to him for payment, and was without actual or constructive notice of any error therein, the amount in question will be passed to the credit of the disbursing officer, and a charge will be raised against the employee for the erroneous payments received by him.

Respectfully,

(Signed) Lindsay C. Warren Comptroller General of the United States.