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MAR 16 1981In Reply
Refer to: B-201156

Dr. Omer K. Petty
Route 9, Carrie Ann Circle
Poplar Bluff, Missouri 63901

Dear Dr. Petty:

We refer to your correspondence dated October 21, 1980, concerning the scheduling and use of your annual leave.

Your submission shows that you are employed as Chief, Dental Service, at the Veterans Administration (VA) Medical Center in Poplar Bluff, Missouri.^{MO} You advise that you have been denied annual leave on numerous occasions on the basis that your presence at the hospital is required for patient care needs and you question the hospital Director's authority to require you to use your annual leave in minimum amounts of 4 days. 06352

You ask for our views on the limitations placed on your use of annual leave. You cite Comptroller General decisions B-188284, March 7, 1978, 57 Comp. Gen. 325; and B-189085, April 3, 1978, which you understand protect an employee's right to use annual leave at his discretion.

Your appointment as a dentist with the VA was apparently pursuant to 38 U.S.C. § 4104, which in pertinent part provides the Administrator of the VA authority to appoint physicians, dentists, and nurses for the medical care of veterans. Subsection 4108(a) of title 38, United States Code, provides in pertinent part as follows:

"(a) Notwithstanding any law, Executive order, or regulation, the Administrator shall prescribe by regulation the hours and conditions of employment and leaves of absence of physicians, dentists * * * appointed to the Department of Medicine and Surgery."



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The regulations implementing a leave system for physicians, dentists and nurses appointed under authority of 38 U.S.C. § 4103, 4104 or 4114 are set forth in VA Personnel Policy Manual, MP-5, Part II, Chapter 7. Paragraph 7a(1) provides in part as follows:

"(1) Annual Leave. The granting of annual leave shall be a matter of administrative discretion as to when and in what amount it may be authorized. Requests for annual leave shall be acted upon in the light of essential medical services and with due regard to the welfare and preferences of individual employees.* * *"

Paragraph 7(a)(5) provides that the minimum charge for leave shall be one day and multiples thereof.

The above regulation provides administrative officials with wide discretion with regard to the granting of annual leave.

The Comptroller General decisions cited above, B-188284 and B-189085, copies enclosed, concerned employees, unlike yourself, who are subject to the provisions of the Annual and Sick Leave Act of 1951, as amended, 5 U.S.C. § 6301 et seq. These decisions did not involve the matter of an employee's entitlement to use annual leave in the manner he desires, but concerned the employee's right to the restoration of annual leave under 5 U.S.C. § 6304(d). The leave had been forfeited under 5 U.S.C. § 6304 as the result of the employee's inability to use such leave due to exigencies of the public service. We note that with regard to employees covered by the Annual and Sick Leave Act of 1951, as amended, supra., the taking of annual leave is subject to the right of the head of the agency concerned to fix the time at which leave may be taken. See 39 Comp. Gen. 611 (1960) and Federal Personnel Manual, Chapter 630, paragraph 3-4.

We call to your attention that the VA regulations in Chapter 7 of VA Personnel Policy Manual, MP-5, Part II,

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do not contain any provision for the restoration of forfeited annual leave. However, paragraph 7b(4)(b) provides that "Employees shall be afforded the opportunity, whenever possible, of using annual leave which they would forfeit if it were not taken."

We trust that the above information will answer the purpose of your inquiry.

Sincerely yours,

/s/

Edwin J. Monsma
Assistant General Counsel

Enclosures