

Civilian Personnel Law Manual

Title II — Leave, Supp. 1979

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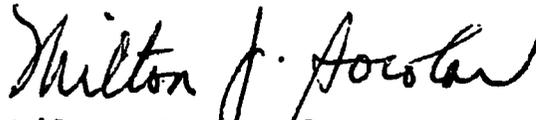
FOREWARD

In December of 1977, Title II, Leave, of the Civilian Personnel Law Manual was issued reflecting decisions of the General Accounting Office in effect through September 30, 1976. We are pleased to announce distribution of the 1979 Supplement to Title II reflecting decisions of this Office from October 1, 1976, through September 30, 1979.

The 1979 Supplement follows the same format as the text of Title II and is intended to be filed as a single unit at the end of Title II.

To the extent possible, we plan to issue annual supplements. In the event that your office has not received sufficient copies of the 1979 Supplement, you should advise the General Accounting Office of the additional copies desired, as well as the total number of copies of future supplements required and any address changes. Please refer to the titles desired and send your request to:

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B L A N K

P A G E

CHAPTER 1

GENERAL PROVISIONS

Prior decisions affected:

31 Comp. Gen. 262 (1952) modified (1-6)

B. EMPLOYEES COVERED

Temporary employees (1-2)

An employee of the Department of the Army, who served three consecutive appointments of less than 90 days each without a break in service, is entitled to annual leave under 5 U.S.C. § 6303(b) for each full biweekly pay period she was employed. B-190005, October 6, 1977.

Intermittent employees (1-2)

An employee whose position was designated "intermittent" is nonetheless entitled to annual leave benefits since he had an established regular tour of duty for each of the 2 workweeks in a biweekly pay period even though he may not have been scheduled to work at the same time and on corresponding days of the 2 workweeks of that pay period. 57 Comp. Gen. 82 (1977).

The fact that an employee's appointment was designated "intermittent" does not determine his entitlement to annual leave benefits if, in fact, he works regularly scheduled tours of duty. 57 Comp. Gen. 82 (1977) and B-183813, June 20, 1975.

Part-time employees (New)

A part-time employee is entitled to benefits under the Annual and Sick Leave Act only if he serves under an established tour of duty for each of the 2 administrative workweeks in each biweekly pay period. 32 Comp. Gen. 490 (1953) and 31 Comp. Gen. 581 (1952).

C. EMPLOYEES EXCLUDED

Experts and consultants (1-3)

An expert appointed on an intermittent basis is not entitled to leave even though he actually worked full

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time since he did not have an established regular tour of duty. 58 Comp. Gen. 167 (1978).

"Officers" (1-4)

The position of Associate Attorney General, which is not a Presidential appointment, is not exempted from the provisions of 5 U.S.C. §§ 6301 et seq.: B-123698, May 10, 1978.

Intermittent employees (1-5)

Commissary cashiers who were employed on an intermittent basis received tentative work schedules each week which were subject to change. Such schedule does not constitute an administratively prescribed regular tour of duty so as to entitle these employees to leave benefits. B-191915, September 29, 1978.

De facto employees (1-6)

Where a person has been appointed to a position by an agency and the appointment is subsequently found to have been improper or erroneous, the employee is entitled to accrual of annual leave and lump-sum payment for unused leave upon separation, unless (1) the appointment was made in violation of an absolute statutory prohibition or (2) the employee was guilty of fraud in regard to the appointment or deliberately misrepresented or falsified a material matter. Prior inconsistent decisions will no longer be followed. This new rule does not apply to persons who have never been appointed or who serve after their appointments have expired since those persons do not satisfy the definition of "employee" in 5 U.S.C. § 2105. B-191977, August 17, 1979 (58 Comp. Gen. ____).

Other decisions holding that de facto employees who are not appointed are not entitled to leave benefits: 57 Comp. Gen. 406 (1978); and B-191397, September 6, 1978.

CHAPTER 2

ANNUAL LEAVE

Errata:

Corrected statement (2-8)

Prior decisions affected:

54 Comp. Gen. 662 (1975), overruled (2-10)

B. ACCRUAL

Rate of accrual

Minimum service requirement (2-3)

An employee, who served less than 90 days and whose appointment terminated prior to the enactment of Pub. L. No. 93-181, is not entitled to credit for annual leave since the amendment to 5 U.S.C. § 6303(b) may not be applied retroactively. B-191474, November 20, 1978.

Pay period requirement

Nonpay status during pay period (2-3)--An employee who suffered a work-related injury was in a leave-without-pay status while receiving compensation under the Federal Employee's Compensation Act, 5 U.S.C. §§ 8101 et seq. While the employee's intermittent service is interrupted by a non-leave earning period, he earns leave only on a pro rata basis. B-180010.12, March 8, 1979.

During suspension or separation

While receiving disability compensation (2-4)

See also B-180010.12, March 8, 1979.

Maximum accumulation (2-5)

Senior Executive Service (New)--Under the provisions of the Civil Service Reform Act of 1978, Pub. L. No. 95-454, 92 Stat. 1224, annual leave accrued by an individual while serving in a position in the Senior Executive Service shall not be subject to the

limitation on maximum accumulation contained in 5 U.S.C. § 6304(a). See 5 U.S.C. § 6304(f).

D. TRANSFERS AND REEMPLOYMENT

Transfers

Between different leave systems (2-8)

Correction: Under 5 U.S.C. § 6308 an employee who transfers between positions under different leave systems without a break in service shall have his leave credited to his new position on an adjusted basis as set forth under CSC regulations. See 5 C.F.R. § 630.501(b), FPM chapter 630, S5-1(a)(2); and FPM Supp. 990-2, Book 630, S5-1(a)(2). **An employee may transfer all accumulated and currently accrued annual leave to his credit as of the date of transfer, and the aggregate amount of such leave, but not in excess of the maximum limitation allowable under the former leave system, shall constitute his new leave ceiling until reduced under 5 U.S.C. § 6304(c).** 48 Comp. Gen. 212 (1978). See also 49 Comp. Gen. 189 (1969).

To position not under 5 U.S.C. §§ 6301 et seq. (New)

Employees who resigned from Federal employment and accepted employment with Federally funded Legal Services Corporation may be paid lump-sum payments for annual leave and may have sick leave balances certified for retirement purposes or for possible recredit since by statute employees of Legal Services Corporation are not Federal employees for leave purposes. B-186449, January 24, 1977. See also Chapter 3, "LUMP-SUM LEAVE PAYMENTS."

E. ADMINISTRATION OF ANNUAL LEAVE

Charges to annual leave

Holidays and standby duty (2-10)

Employees who receive premium pay under 5 U.S.C. § 5545(c)(1) and who are absent on holidays which occur within their regular tours of duty should be charged leave for those absences since their duty on holidays was included in determining their premium

pay rates. 56 Comp. Gen. 551 (1977), overruling 54 Comp. Gen. 662 (1975). See also B-192815, December 7, 1978. However, such employees may be excused from duty on such holidays without a charge to leave where it has been administratively determined that their services are not required on a particular holiday. 56 Comp. Gen. 551 (1977). This 1977 decision is limited to prospective application, and leave which was credited or paid lump-sum under the authority of 54 Comp. Gen. 662 prior to April 19, 1977 (effective date of 56 Comp. Gen. 551), need not be collected. However, if such leave was not recredited or paid prior to April 19, 1977, there is no authority to do so after that date. 58 Comp. Gen. 345 (1979).

The Department of the Army closed the commissary on Saturday before a Monday holiday to avoid the payment of holiday pay to full-time employees on a Tuesday-through-Saturday shift who were entitled to a day "in lieu of" a holiday under 5 U.S.C. § 6103(b)(2). Since part-time or intermittent employees were not entitled to a day "in lieu of" a holiday, they may be charged annual leave or leave without pay on the Saturday the commissary was closed. B-192104, September 1, 1978.

Nonworkdays (New)

An employee who had exhausted his military leave sought to use annual leave when he was prevented from working overtime on a nonworkday due to a weekend military drill. Annual leave may be used for military training, but there is no authority to grant annual leave for a nonworkday since under 5 U.S.C. § 6302(a) days of leave for which an employee may receive compensation are exclusive of holidays and nonworkdays. B-188145, November 15, 1977.

Effect of time change (New)

Employees, who are working a night shift on the last Sunday in April when daylight savings time begins, may be charged 1 hour of annual leave since they work only 7 hours that shift. Administrative leave may not be granted. B-195779, April 25, 1978. See also Chapter 5, "ADMINISTRATIVE LEAVE."

Charge for excess compensatory time (New)

Where an employee was erroneously granted excess compensatory time off, the excess compensatory time may be considered for waiver under 5 U.S.C. § 5584. If waiver is not allowed, the employee's annual leave balance may be charged for compensatory time erroneously granted, but only with the employee's consent. 58 Comp. Gen. 571 (1979) and B-192839, May 3, 1979.

Substitution of annual leave

For sick leave

To avoid forfeiture of annual leave (2-11)--An employee, who became ill in May and did not return to work until September, requested that 64 hours of annual leave be substituted for an equivalent amount of sick leave for the period in August when he scheduled and took his vacation. Since the annual leave had been scheduled for use in August prior to the employee's illness and since the employee made a timely request for correction of leave records upon return to duty, the annual leave may be substituted for an equivalent amount of sick leave. B-192039, January 31, 1979.

Following separation (New)

An employee, who submitted a memorandum requesting emergency leave or resignation, committed suicide approximately 2 months after voluntary resignation. Since documentation indicates the employee intended resignation, the separation date may not be changed for purposes of granting sick leave, annual leave, or leave without pay until death. The separation date may not be changed in the absence of violation of regulation or administrative error failing to effect intent of the parties. B-189895, November 2, 1977.

Terminal leave

Administrative discretion (2-13)

An employee who resigned November 10, 1973, forfeited 107 hours of annual leave prior to the amendment to 5 U.S.C. § 5551(a). Since the record shows that the

parties did not intend forfeiture to occur and since it was the agency's policy to avoid forfeiture in such circumstances, the employee may be restored to the rolls for the period of the unused annual leave. B-191210, July 21, 1978.

Where an employee took total accrued annual leave (6 hours) during the final 6 hours of his last day of employment before separation, the rule regarding terminal leave does not apply, since the employee substantially worked the entire final pay period and worked part of the last day of that period. The employee could properly accrue and use the leave during the last day of employment. B-190374, January 20, 1978.

Traveltime

Other traveltime

Administrative discretion (2-15)--Where an employee is authorized to travel by common carrier but elects to travel by privately owned vehicle for his personal convenience, it is within the discretion of the agency to charge the employee annual leave for the excess traveltime. 56 Comp. Gen. 865 (1977) and B-187315, May 5, 1977. See also Chapter 5, "ADMINISTRATIVE LEAVE."

Similarly, where an employee chooses an indirect route while traveling to a new duty station, he may be charged annual leave for the excess traveltime. B-192199, January 31, 1979, and B-189808, April 28, 1978.

An employee who delays or interrupts his official travel for personal reasons may be charged annual leave. B-185652, December 28, 1976, and B-188012, May 10, 1977. In addition, where an employee abandons his temporary duty assignment due to a death in his family, he should be charged annual leave after the time he abandoned his official duty. B-188702, May 19, 1978.

An employee who was scheduled to perform temporary duty departed from his headquarters several days earlier on annual leave. Where the temporary duty assignment was cancelled and the employee would not

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have taken annual leave but for the temporary duty, it is within the discretion of the agency whether or not to charge annual leave for the day the employee returns to his headquarters. B-122739, February 10, 1977.

Where an employee left on vacation but was ordered to return to his headquarters for official duty, he need not be charged annual leave in connection with his return travel. However, there is no basis for recrediting any additional hours representing his vacation leave. B-191588, January 2, 1979.

Since an agency has discretion to charge annual leave for excess traveltime, the agency may also require the employee to submit accurate time and attendance reports for each day traveled. 56 Comp. Gen. 104 (1976).

Limitation on discretion (2-15)--Employees who were scheduled to attend a meeting to begin on Tuesday were authorized to travel to the meeting on Monday. Where the employees departed for the meeting on Sunday for reasons of personal convenience, they should not be charged annual leave for Monday since on a constructive travel basis they would have traveled on Monday. B-180021, September 5, 1978.

An employee on temporary duty was delayed when his automobile suffered a mechanical breakdown. Since use of his automobile was advantageous to the Government and since the employee's actions were reasonable and in accordance with the agency instructions, the employee should not be charged annual leave in connection with the excess traveltime. B-186829, January 27, 1977.

Involuntary leave (2-16)

Annual leave should be charged for time spent by employees on erroneously authorized house-hunting trips. B-194642, August 24, 1979 (58 Comp. Gen. ____). See also "RESTORATION OF LEAVE" in this Chapter.

Repayment of excess leave (New)

Where an employee was granted excess annual leave, he may elect to have the excess leave charged against accrued

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annual leave under the provisions of 5 U.S.C. § 6302(f). B-189975, October 19, 1977. The employee may elect the method of repayment under 5 U.S.C. § 6302(f) even if the employee may have been aware of the overcharge at the time if occurred. The employee's actual or constructive knowledge of the error is relevant only when waiver of overpayment is considered under 5 U.S.C. § 5584. B-187692, October 13, 1977.

F. RESTORATION OF LEAVE

Under Public Law 93-181

Forfeiture under other provisions (2-16)--See also B-191210, July 21, 1978, citing B-182608, February 27, 1975.

However, an employee, who resigned November 10, 1973, and forfeited annual leave prior to the amendment to 5 U.S.C. § 5551(a), may be restored to the rolls for the period of the unused annual leave where the record indicates that the parties did not intend a forfeiture to occur and it was the agency's policy to avoid forfeiture in such circumstances. B-191210, July 21, 1978. See also "Terminal leave" in this Chapter and Chapter 3, "LUMP-SUM LEAVE PAYMENTS."

Leave scheduled in advance (2-17)

General rule (New)--Leave which is forfeited due to exigencies of public business or sickness of the employee must have been scheduled in advance in order to be considered for restoration. See 5 U.S.C. § 6304(d)(1)(B,C), and 5 C.F.R. § 630.308. This requirement that leave be scheduled in advance is statutory and may not be waived or modified even where extenuating circumstances may exist. 56 Comp. Gen. 470 (1977) and B-193567, May 24, 1979. This requirement may not be waived even for extenuating circumstances such as those that existed in Vietnam at the end of leave year 1974. B-194545, June 15, 1979, and B-191379, September 28, 1978. This rule also applies to employees who are performing undercover assignments. B-191540, December 8, 1978.

The failure to give actual notice of this scheduling requirement to the employees is not an administrative error since the employees are charged with actual or

constructive notice of the requirement. 56 Comp. Gen. 470 (1977); B-193567, May 24, 1979; and B-187104, March 8, 1978.

The leave must be scheduled in writing. B-187104, September 28, 1978. Furthermore, the leave must be scheduled before the third pay period prior to the end of the leave year, and scheduling the leave on the first day of the third pay period is not sufficient. B-194459, August 22, 1979.

Exception (New)--An exception to the general rule on scheduling requirements exists where the agency has implemented a written regulation which requires that the employees be counseled concerning a possible forfeiture of annual leave. 55 Comp. Gen. 784 (1976). A general statement of supervisory responsibility will not be sufficient. B-192510, April 6, 1979. Where a request for leave is submitted but not approved, see "Administrative error," below.

Administrative error

What constitutes an administrative error (2-17)--

Failure to act upon request (New)

Where an employee submits a bona fide, formal, and timely request for leave, there can be no discretion on the part of the agency whether to schedule the leave or not. The agency must approve and schedule the leave at the time requested by the employee or, if that is not possible because of the agency's workload, at some other time. Where the employee demonstrates that, but for an administrative error in failing to schedule the requested leave or presenting the case to the proper official for a determination of a public exigency, the leave was lost because of a public exigency or sickness and was not lost due to the fault of the employee, then the employee is entitled to restoration of the leave under 5 U.S.C. § 6304(d)(1)(A). 58 Comp. Gen. 684 (1979); 57 Comp. Gen. 325 (1978); B-187104, September 28, 1978; B-190263, July 5, 1978; and B-189085, April 13, 1978.

If an agency is unable for the balance of the leave year to approve and schedule and employee's request for leave, the agency will not be required to perform the needless task of approving and immediately cancelling the leave. However, if the agency is unable, due to an exigency of public business, to reschedule the requested leave during the current leave year, the failure to submit the matter to the designated official for his determination of the exigency constitutes an administrative error which would support restoration of the annual leave under 5 U.S.C. § 6304(d)(1)(a). B-187104, September 28, 1978, and B-187104, March 8, 1978.

Failure to follow mandatory regulation (New)

Where an agency has promulgated written regulations requiring counseling to avoid forfeiture of annual leave, the failure to counsel constitutes an administrative error under 5 U.S.C. § 6304(d)(1)(A). 55 Comp. Gen. 784 (1976).

Where an employee elects to be carried on a continuation-of-pay status for a 45-day period after a job-related injury under the authority of 5 U.S.C. § 8118 and the agency, contrary to a mandatory regulation, refuses to continue his pay but requires him to take leave to cover periods of his absence attributable to the injury, the annual leave shall be restored to his account and annual leave subject to forfeiture may be restored as leave lost because of administrative error. 58 Comp. Gen. 507 (1979).

Employee on extended illness (New)

Where an employee suffers a prolonged illness before the end of a leave year it is presumed that if the employee had been properly advised of his annual leave balance he would have requested scheduling of annual leave in order to avoid forfeiture. B-193431, August 8, 1979, and B-182608, February 19, 1976. Thus, where such an employee was not given notification that he would forfeit annual leave if he did not apply for it, an administrative error occurred and the forfeited leave may be restored to the employee.

B-187777, February 27, 1979, modifying B-187777, January 3, 1978. However, when the employee applied for disability retirement and the agency placed him on leave without pay on December 31, in order to preserve his entitlement to cost-of-living increases in his annuity pursuant to CSC regulations, any leave forfeited after December 31, but before the end of the leave year, is not forfeited because of administrative error and may not be restored. B-187777, February 27, 1979.

What does not constitute administrative error (New)--

Scheduling problems

The failure of an agency to advise an employee of the scheduling requirements of 5 U.S.C. § 6304(d)(1)(B,C) does not constitute an administrative error since employees are charged with constructive knowledge of those requirements. 56 Comp. Gen. 470 (1977); B-193567, May 24, 1979; B-192510, April 6, 1979; and B-187104, March 8, 1978. In the absence of a written regulation requiring counseling to avoid forfeiture, a general statement regarding a supervisor's responsibility to insure that leave is scheduled is not sufficient. B-192510, April 6, 1979. Furthermore, the fact that the supervisor does not require leave requests to be in writing does not constitute administrative error since the burden is on the employee to submit a written request for annual leave. B-192510, April 6, 1979, and B-187104, September 28, 1978.

Erroneous advice or delays

Where an employee obtained an unofficial estimate of projected retirement annuity but later postponed such retirement due to an error in the estimate, he may not have forfeited excess annual leave restored since the calculation of error did not involve consideration of leave matters and, thus, leave was not forfeited due to administrative error. B-191041, June 2, 1978.

An employee, who did not use excess annual leave because of alleged delays in processing his

disability retirement application, may not have forfeited leave restored in the absence of an agency regulation requiring counseling on impending forfeiture of annual leave. B-187055, March 4, 1977.

Miscellaneous cases

An employee who was required to use compensatory time before using annual leave did not schedule use of annual leave and forfeited 208 hours of excess annual leave. Although agency regulations required supervisors to schedule annual leave to avoid forfeiture, the unusual circumstances which resulted in the forfeiture of leave in this case do not provide a basis for restoration of the forfeited leave due to administrative error. B-186484, June 7, 1977.

Leave which was forfeited under the provisions of 5 U.S.C. § 5551(a), prior to the 1973 amendment to the statute, is not subject to restoration due to administrative error. B-191210, July 21, 1978, and B-182608, February 27, 1975.

Exigencies of public business

Leave scheduled in advance (2-18)--Before leave forfeited due to exigencies of public business may be restored, it must have been scheduled in advance. 58 Comp. Gen. 684 (1979); B-193567, May 24, 1979; B-191379, September 28, 1978; and B-187104, March 8, 1978.

However, when an employee submits a timely request in writing for leave, there can be no discretion whether to schedule the leave or not. The agency must approve and schedule the leave either at the time requested by the employee, or if not possible because of the agency's workload, at some other time. In the case of an exigency of public business, the matter must be submitted to the designated official for his official determination. The agency's failure to present the case to the proper official for determination of an exigency of public business constitutes administrative error. See 58 Comp. Gen. 684 (1979); B-187104, September 28, 1978; and "Administrative error," above.

Sickness

Leave scheduled in advance--

Employee on extended illness (2-18)

A prolonged illness preceding the end of the leave year raises a presumption that the employee would have requested proper scheduling of annual leave otherwise subject to forfeiture. B-193431, August 8, 1979, and B-187777, February 27, 1979, modifying B-187777, January 3, 1978.

An employee, whose disability retirement application was approved on October 27, 1976, scheduled use of his annual leave which was subject to forfeiture but did not use the scheduled annual leave since he was on extended sick leave pending his disability retirement. The forfeited leave may be restored under 5 U.S.C. § 6304(d)(1)(c) since neither the statutory language nor the legislative history of Pub. L. No. 93-181 indicates that annual leave which is not used as a result of extended sick leave pending disability retirement may not be restored under this provision. 58 Comp. Gen. 435 (1979).

Employee election to use annual leave (2-19)

See also B-191327, November 8, 1978, citing 54 Comp. Gen. 1086 (1975).

For restoration of leave used during on-the-job injury, see "Under Federal Employee's Compensation Act," below.

Use of restored leave (New)

Forfeiture--An employee failed to use 160 hours of unused forfeited and restored annual leave within the 2-year time limit imposed under 5 C.F.R. § 630.306. Unused restored leave may not be restored after expiration of the 2-year time limit. B-188993, December 12, 1977.

In 1973 an agency discovered an error in the rate of accrual of leave of an employee which resulted in crediting his leave account with 24 additional hours

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in 1972 and 26 additional hours in 1973. The leave which was credited in 1972 but forfeited without an opportunity to be used, may be restored. However, leave which was earned in a leave year but forfeited that same year may not be restored. B-186820, December 16, 1977.

Failure to charge restored leave account--Where an agency fails to charge the restored leave account at the employee's request, restored annual leave which is subsequently forfeited may be restored to an employee's leave account. 56 Comp. Gen. 1014 (1977).

Under Back Pay Act of 1966 (2-19)

Generally (New)

An employee who was erroneously separated and later reinstated is entitled to credit for annual leave earned during the erroneous separation under the authority of 5 U.S.C. § 5596. Annual leave which is in excess of the employee's annual leave ceiling shall be credited to a separate leave account which, under CSC regulations, gives the employee 2 years from the date the leave is credited to the separate account in which to schedule and use such annual leave. 57 Comp. Gen. 464 (1978).

Erroneous holiday (New)

The agency erroneously applied Executive Order No. 11582, February 11, 1971, and designated Tuesday, instead of the prior Saturday, as a holiday "in lieu of" Washington's Birthday for employees with a Tuesday-through-Saturday workweek. To correct the error, the agency paid holiday pay for Saturday and charged employees annual leave for Tuesday. However, under these circumstances this charge to leave constitutes an unjustified or unwarranted personnel action and the leave should be restored. E-127474, February 9, 1979.

Involuntary leave (New)

Disability retirement--An employee, who is placed on involuntary leave pursuant to CSC regulations pending action on an agency-filed application for disability retirement, is not entitled to restoration

of leave under the Back Pay Act where the agency-filed application was denied since the determination to place her on leave was based on competent medical findings. B-184522, April 21, 1977, affirming B-184522, March 16, 1976. However, where the agency-filed application was initially denied by the CSC and the agency appealed that determination, the employee must be restored to duty, and continued involuntary leave constitutes an unwarranted or unjustified personnel action. B-184522, March 16, 1976.

An employee, who was on leave and approved leave without pay pending a determination on his application for disability retirement, including his unsuccessful appeal of the denial of his application, may not have leave recredited under 5 U.S.C. § 5596 since the record does not establish that the leave was involuntary or that the employee was ready, willing, and able to work during that period. B-128314, January 8, 1979.

Employee illness--Based on a preliminary diagnosis of tuberculosis made by the employee's personnel physician, the agency placed the employee on involuntary leave while confirmatory tests were being made. The agency's decision was based upon competent medical evidence, and leave may not be restored under the Back Pay Act even though the required tests were not conducted by the employee's treating physician and the state-operated laboratories within a normal time period. B-181313, May 6, 1977, affirming B-181313, February 7, 1975. See also B-192956, April 9, 1979.

Employee suspension--An employee who was suspended from employment after her arrest on criminal charges is not entitled to leave restoration after some of the criminal charges were dismissed since there was no finding that the suspension was an unjustified or unwarranted personnel action under the Back Pay Act. B-192643, July 6, 1979.

Under Federal Employee's Compensation Act (New)

An employee who uses annual or sick leave to recuperate from a work-related injury may "buy back" such leave pursuant to 20 C.F.R. § 10.310, be placed on leave without pay, and accept compensation for the injury under the

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Federal Employee's Compensation Act, 5 U.S.C. §§ 8101 et seq. However, annual leave which is reinstated as a result of a "buy back" is subject to forfeiture under 5 U.S.C. § 6304(a) and may not be restored since it was used rather than forfeited. B-180010.12, March 8, 1979; B-187104, March 8, 1978; B-182608, August 9, 1977; and B-184008, March 7, 1977. To avoid forfeiture, an employee may choose to be placed on annual leave during this period, and the employee would be required to refund a portion of the employee's compensation to the Department of Labor. B-180010.12, March 8, 1979, and B-182608, August 9, 1977.

An employee who wishes to "buy back" leave where there are no official records from which to determine the amount of leave taken, may "buy back" leave on the basis of secondary evidence determined to be acceptable by the agency such as leave requests, Leave and Earnings Statements, Time and Attendance Reports, personal leave records, and certificates from supervisors and timekeepers. B-195238, August 23, 1979 (58 Comp. Gen. ____).

G. MISCELLANEOUS (New)

An audit of time and leave records of an employee upon retirement revealed an alleged overstatement of 40 hours of annual leave. Where a review of evidence, particularly the time and attendance report for the period in question, discloses a lack of adequate documentation to clearly show the claimant used 40 hours of annual leave, such leave should be credited to the employee's account. B-186355, November 9, 1977.

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CHAPTER 3

LUMP-SUM LEAVE PAYMENTS

Prior decisions affected:

54 Comp. Gen. 655 (1975), distinguished (3-5)

A. GENERALLY (3-1)

An employee who resigned November 10, 1973, and forfeited 107 hours of annual leave prior to the amendment to 5 U.S.C. § 5551(a) may be restored to the rolls for the period of the unused annual leave since the parties did not intend a forfeiture to occur and it was the agency's policy to avoid forfeiture in such circumstances. B-191210, July 21, 1978. However, the administrative error provision in 5 U.S.C. § 6304 does not apply to leave forfeited pursuant to 5 U.S.C. § 5551(a). B-191210, July 21, 1978, and B-182608, February 27, 1975.

B. ENTITLEMENT

Payable upon transfer or change of positions

Transfer to position not under leave system (3-1)

An executive branch employee who went on leave without pay in order to accept a position with a congressional committee and who later resigned from his agency is entitled to lump-sum payment for annual leave upon date of separation and not the date he was placed on LWOP. B-191713, May 22, 1978.

Employees who resigned from a Federal agency and accepted employment with Federally funded Legal Services Corporation may be paid lump-sum payments for annual leave pursuant to 5 U.S.C. § 5551 even though the Legal Services Corporation paid "cash bonuses" for certain amounts of leave. B-186449, January 24, 1977.

Lump-sum payment not payable

Exempted officers (3-4)

A Foreign Service officer, who was appointed Ambassador (an exempted position in which no leave

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is earned) in 1972, retired as a Foreign Service officer in 1975 but remained Ambassador until 1976. He may not be paid lump-sum payments for accrued annual leave upon retirement as a Foreign Service officer because the statute and Department of State regulations preclude such payment until an exempt officer is separated from the Federal service or is transferred to a specified position. B-186043, October 4, 1976.

C. RATE PAYABLE

Statutory pay increases

Wage board employees (3-5)

Wage board employees who retire or are separated prior to the date a retroactive wage increase was put into effect under the provisions of section 9(b) of Pub. L. No. 92-392 (5 U.S.C. § 5343 note) are entitled to lump-sum leave payments computed at the increased rate. Retroactive wage increases under the authority of section 9(b) are not limited to employees who were in the service of the Government on the day the wage increase is ordered into effect. 57 Comp. Gen. 589 (1978), distinguishing 54 Comp. Gen. 655 (1975).

Cost-of-living allowances and foreign differentials

Separated away from post of duty (3-6)

Where an employee was evacuated from Vietnam to the United States, he no longer received post differential and, therefore, is not entitled to inclusion of post differential in the computation of lump-sum payment for accumulated annual leave upon separation from service in the United States. B-186046, November 9, 1976.

CHAPTER 4

SICK LEAVE

Errata:

B-181087, June 21, 1974 (4-12)

Prior decisions affected:

54 Comp. Gen. 1086 (1975), B-182804, March 29, 1976,
and B-181087, June 21, 1974, modified (4-12)

A. ACCRUAL

Entitlement (4-1)

While receiving disability compensation (New)

See B-180010.12, March 8, 1979; B-189531,
September 14, 1977; and cases set forth in Chapter 2,
"ANNUAL LEAVE," "Accrual."

B. TRANSFERS AND REEMPLOYMENT

Transfers

Between different leave systems

ASCS employees (4-2)--Where the record is clear that the Department of Agriculture intended to transfer an ASCS County Committee employee to a civil service position without a forfeiture of accumulated sick leave, the agency may correct the employee's records to reflect a transfer without a break in service. A 19-day break in service may be changed to authorized leave of absence without pay since forfeiture of sick leave in this case would be in direct contravention of clear statutory mandate to avoid forfeiture during such transfers. B-191014, March 10, 1978.

Legal Services Corporation (New)--Employees who resigned from Federal employment and accepted employment with Federally funded Legal Services Corporation were paid bonuses equal to a portion of accrued annual and sick leave. Employees may have sick leave balances certified for retirement purposes or for possible recredit since by statute employees of the

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Legal Services Corporation are not Federal employees for leave purposes. B-186449, January 24, 1977.

Reemployment after break in service

Generally (4-2)

A NASA employee who resigned his position to accept employment with a congressional committee is entitled to recredit of his sick leave balance if he is reemployed within 3 years from the date of separation. B-191713, May 22, 1978.

Appointment after 3 years (4-3)--An employee who suffered a break in service of more than 3 years may not be recredited with previously earned sick leave. The CSC regulation contained in 5 C.F.R. § 630.502(b)(1) has the force and effect of law with no exception or waiver. B-188913, October 17, 1977.

Evidence to support claim (4-4)

Generally (New)

The crediting of sick leave is primarily an administrative matter, and the employing agency must determine the acceptability of any secondary evidence presented and whether it may be used as a basis for crediting the leave claimed. Examples of supporting evidence which might be considered sufficient would include Time and Attendance Reports, Leave and Earnings Statements, personal leave records, or certificates of former supervisors or timekeepers indicating leave earned and used during the period. B-189288, November 23, 1977. See also B-195238, August 23, 1979 (58 Comp. Gen. ____).

C. ADMINISTRATION OF SICK LEAVE

Granting (4-6)

Prepared childbirth (New)

An employee, who was present at the delivery of his child in accordance with the Lamaze method of prepared childbirth, claims sick leave should be substituted for annual leave granted by the agency. Sick leave is appropriate only when the circumstances

specifically meet the criteria contained in the regulations. See 5 C.F.R. § 630.401. Thus, sick leave may not be allowed since the employee did not undergo medical treatment and he was not incapacitated for duty as required by regulations. B-195042, August 6, 1979, citing 55 Comp. Gen. 183 (1975).

Advance leave

Administrative determination (4-9)

The granting of advance sick leave is normally a matter within the discretion of the agency. However, where an employee of the IRS requested 30 days of advance sick leave, but her request was denied based on the assumption that she would not return to duty, the IRS may retroactively grant the employee advance sick leave after her return to duty if the agency determines its original action constituted an unwarranted or unjustified personnel action under the Back Pay Act, 5 U.S.C. § 5596. B-187171, June 7, 1977.

Liquidation of advance leave (4-9)

Prior to voluntary retirement, an employee had been advanced 240 hours of sick leave. After he retired, the money equivalent of advanced sick leave was collected back from his accrued annual leave and by set-off from his retirement fund. In view of evidence that the employee was disabled at the time of retirement, the employing agency may refund money equivalent of advanced sick leave since under 5 C.F.R. § 630.209(b) an employee is not required to refund unliquidated advance sick leave if he resigns or retires on disability. B-188903, July 6, 1977.

An employee who was advanced sick leave may, with administrative approval, refund the value of the advanced sick leave she has taken and be placed in a leave-without-pay status for the period involved. B-189531, September 14, 1977. See also 29 Comp. Gen. 76 (1949).

Change of separation date for purpose of granting sick leave

Generally (4-9)

An employee committed suicide approximately 2 months after his voluntary resignation. Although the employee's initial memorandum presented the agency with the alternative of granting leave or accepting his resignation, subsequent documents show that the employee intended resignation. The separation date may not be changed for the purpose of granting sick leave, annual leave, and leave without pay until the employee's death because such date may not be changed in the absence of a violation of regulation or a bona fide administrative error in effecting the separation. B-189895, November 2, 1977.

Substitution of sick leave

For annual leave (4-12)

General rule--An employee who was entitled to use sick leave specifically requested that annual leave be charged instead. Subsequently, the employee desired to retroactively substitute sick leave for the annual leave charged. Once annual leave is granted, an employee may not thereafter have such leave charged to sick leave and be reccredited with the amount of annual leave previously charged. See B-191327, November 8, 1978, citing 54 Comp. Gen. 1086 (1975) and B-181087, June 21, 1974. 5 U.S.C. § 6304(d)(1) does not allow the retroactive substitution of sick leave for annual leave because an employee, with the aid of hindsight, realized that his choice of leave was injudicious. B-193431, August 8, 1979, and B-190662, July 7, 1978.

Exception (New)--In Lindsey v. United States, 214 Ct. Cl. 574 (1977), the Court of Claims considered the claim of an employee who requested and was granted annual leave for a period of incapacity in order to prevent a possible forfeiture of annual leave. Later that calendar year the employee elected to retire, and he requested that the sick leave be retroactively charged for the period in lieu of the annual leave previously requested and granted since the annual leave could be included in his lump-sum payment, while the fractional month credit for sick leave gave him

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no benefit for retirement purposes. The court held that when an employee seeks leave substitution to be compensated for all his accumulated annual leave in the same year of his retirement, substitution of sick leave for annual leave is allowable.

The court, although limiting its holding to the specific facts of the case, suggested that GAO review its leave substitution policy. In light of the Lindsey decision, where an employee retires or dies during the same year in which the leave is taken, and a timely request is made, agencies may allow retroactive leave substitution in their discretion depending upon the circumstances of each case. Prior decisions to the extent they are inconsistent will no longer be followed. 57 Comp. Gen. 535 (1978).

However, cases which do not present the special circumstances as set forth in Lindsey and 57 Comp. Gen. 535 (1978) will be governed by the general rule as set forth above. B-193431, August 8, 1979, and B-190662, July 7, 1978.

For leave without pay (4-13)

Unjustified or unwarranted personnel action (New)--An employee of the IRS requested 30 days advance sick leave, but her request was denied because it was assumed she would not return to duty. Upon her return to duty she sought a retroactive grant of the advance sick leave and substitution of the sick leave for leave without pay. If the agency, upon review, should find that the original denial was an unjustified or unwarranted personnel action under the Back Pay Act, 5 U.S.C. § 5596, corrective action may be taken. B-187171, June 7, 1977.

Involuntary sick leave (4-14)

Incapacitated for performance of assigned duties (New)

An employee who performed duties for which the agency required safety goggles was placed on involuntary sick and annual leave after a medical determination that, due to a vision impairment, he should not be required to wear safety goggles. His sick leave may not be restored since an employee may be involuntarily placed on sick leave when the cognizant administrative officials determine, based upon competent medical

evidence, that the employee is incapacitated for the performance of his assigned duties. B-193559, April 27, 1979. See also B-186197, July 28, 1976, and B-181313, February 7, 1975.

Pending fitness-for-duty examination (New)

The initial administrative action to place a Veterans Administration police officer on involuntary sick leave pending a fitness-for-duty examination is justified where the conduct of the employee, after an on-the-job injury, raises a question concerning his ability to perform the duties of the position without disrupting hospital patients and personnel. Sick leave may not be restored since, after the scheduled medical examination, the employee was found not fit to perform the duties of his position. Also, it is not unreasonable for the agency to take 7 weeks to reach a final determination since the agency had to schedule additional medical tests and examinations when the initial tests proved inconclusive. B-192956, April 9, 1979.

D. MISCELLANEOUS (New)

Recredit of sick leave

Employee receiving disability compensation

An employee who uses sick leave to recuperate from a work-related injury may "buy back" such leave pursuant to 20 C.F.R. § 10.310, be placed on leave without pay, and accept compensation for the injury under the Federal Employee's Compensation Act, 5 U.S.C. §§ 8101 et seq. B-195238, August 23, 1979 (58 Comp. Gen. ____.) There is no other authority to "buy back" sick leave except under the conditions prescribed in 20 C.F.R. § 10.310. B-189531, September 14, 1977. However, with administrative approval an employee may liquidate advanced leave by refunding the value of the sick leave used and by being placed in a leave-without-pay status for that period. B-189531, September 14, 1977. See also 29 Comp. Gen. 76 (1949).

Lump-sum payment

An employee who served nearly 5 months on a temporary appointment sought reimbursement for his accumulated sick

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leave. Unused sick leave may be credited towards service upon retirement or it may be recredited to the employee if reemployed within 3 years from separation. However, there is no authority for lump-sum payment of sick leave. B-190152, November 30, 1977.

B L A N K

P A G E

CHAPTER 5

OTHER LEAVE PROVISIONS

Errata:

B-119969, March 21, 1969 (5-9)
B-160343, November 23, 1969 (5-10)
First line: 5 U.S.C. (5-11)

Prior decisions affected:

54 Comp. Gen. 662 (1975) overruled (5-6)

A. ADMINISTRATIVE LEAVE

Administrative discretion (5-1)

Donating blood (New)

The granting of administrative leave to a civilian employee of the Army so that he, as one of two medically acceptable donors, could donate blood on a semi-weekly basis to his critically ill nephew was a proper exercise of administrative discretion. While the CSC has not issued regulations regarding the granting of administrative leave, the matter is discussed in FPM Supplement 990-2, Book 630, subchapter S11, which indicates that donating blood has been recognized as one of the areas for which administrative leave has been authorized under law, Executive order, or decisions of our Office. B-188189, November 2, 1977.

Rest period after travel (5-2)

For discussion of acclimatization rest in connection with the Fly America Act, see Title III - TRAVEL, Chapter 4.

Rest break in office (New)

Agencies may grant employees brief rest periods when such periods are determined to be beneficial or essential to the efficiency of the Federal service. However, such periods are considered to be part of the employee's basic workday, and an employee who skipped a rest period and departed early would not

have worked a full 40-hour week. Furthermore, any decision to expand a lunch period from 30 to 45 minutes should be done pursuant to 5 U.S.C. § 6101(a)(3)(F) rather than scheduling a 15-minute rest break prior to lunch. B-190011, December 30, 1977. See also B-188687, May 10, 1978.

Medical purposes (5-3)

Work-related injury (New)

An agency's action of placing an employee on administrative leave for 1-1/2 months due to an on-the-job injury was improper as no statutory authority exists for this action. Although certain situations which are discussed in FPM Supplement 990-2, Book 630, subchapter S11-5, have been recognized where an employee may be placed on administrative leave for brief periods of time, no such authority exists for granting extended periods of administrative leave. B-192510, April 6, 1979.

However, under the provisions of 5 U.S.C. § 6324 a member of the Executive Protective Service force may not be charged sick leave for an absence due to an injury or illness resulting from the performance of duty. The employee is placed on administrative leave. 57 Comp. Gen. 781 (1978).

Veteran's physical examination (New)

Under the provisions of Executive Order No. 5396, July 17, 1930, a disabled veteran shall be permitted to use annual or sick leave or leave without pay in order to receive medical treatment. However, it is not within the discretion of the agency to grant administrative leave for treatment or examination. B-188012, May 10, 1977.

Disability retirement (New)

A United States Magistrate, who earns neither sick nor annual leave, may not have 35 days of administrative leave retroactively granted so as to change the date of his disability retirement from November 9, 1976, to December 31, 1976. An employee's separation date may not be changed absent a bona fide administrative

error, and there is no authority to grant administrative leave under these circumstances. B-190533, December 2, 1977.

Other specific situations (5-4)

Incident to training (New)

Where the FAA has authorized travel by common carrier to a training site and has determined that travel by privately owned vehicle is not advantageous to the Government, the FAA may not grant administrative leave for the excess traveltime occasioned by an employee's use of a privately owned vehicle as a matter of personal preference. 56 Comp. Gen. 865 (1977).

However, it is permissible for a union contract between the FAA and its employees to provide that 1 day of administrative leave will be provided to FAA employees on temporary duty at the FAA Academy, Oklahoma City, Oklahoma, for the purpose of finding living accommodations. Because accommodations are not provided the employees and per diem is reduced due to the extended temporary duty, the 1-day provision would be consistent with prior decisions recognizing that various situations within the context of official travel may require administrative leave, especially if they directly or indirectly further the agency's function. B-192258, September 25, 1978.

Bad weather (New)

An employee may not be allowed 2 days of administrative leave where her return to work from annual leave was delayed due to a severe snow storm at her vacation site. B-193389, November 29, 1978.

It is within the discretion of the employing agency to allow only 2 hours of administrative leave for inclement weather even though the employee claimed 15 hours of administrative leave for severe ice conditions which caused him to be late for work. B-189775, October 19, 1977.

Union activities (New)

Under the provisions of the Civil Service Reform Act

of 1978, Pub. L. No. 95-454, 92 Stat. 1214, employees shall be authorized official time while representing a labor organization in the negotiation of a collective-bargaining agreement. In addition, the Federal Labor Relations Authority may determine whether official time shall be authorized to employees participating in proceedings before the authority. All other matters concerning the use of official time are subject to negotiation between the agency and the union, except for matters solely relating to the internal business of a labor organization which must be performed when the employee is in a nonduty status. See 5 U.S.C. § 7131.

Daylight savings time (New)

Employees who work the night shift on the last Sunday in April when clocks are set ahead for daylight savings time may not be allowed 1 hour of administrative leave at the end of the shift to fulfill the requirement that they work 8 actual hours. Employees must use 1 hour of annual leave or, in the alternative by union agreement or agency policy, employees may be allowed to work 1 hour beyond the end of their shift. 57 Comp. Gen. 429 (1978).

Insurance proceeds (New)

Under 5 U.S.C. § 6324, a member of the Executive Protective Service is not charged sick leave while recuperating from an on-the-job injury. The employee is placed on administrative leave. The United States has no authority to collect from the liability insurer of the negligent party causing the employee's injury an amount to compensate itself for the administrative leave granted the employee. 57 Comp. Gen. 781 (1978).

B. HOLIDAYS

Irregular unscheduled holiday work (5-6)

The holding in 54 Comp. Gen. 662 (1975) that employees receiving premium pay under 5 U.S.C. § 5545(c)(1) should have leave restored to them which was charged to them for absences on holidays is overruled in part. Because this decision was based on erroneous information that the premium pay of the employees did not take into account holiday pay, that part of the decision specifying that

the employees should not be charged annual leave for a holiday within their tour of duty is overruled. 56 Comp. Gen. 551 (1977). See also B-192815, December 7, 1978. However, such employees may be excused from duty on such holidays without a charge to leave where it has been administratively determined that their services are not required on a particular holiday. 56 Comp. Gen. 551 (1977).

This 1977 decision is limited to prospective application, and leave which was credited or paid lump-sum under the authority of 54 Comp. Gen. 662 prior to April 19, 1977 (the effective date of 56 Comp. Gen. 551), need not be collected. However, if such leave was not recredited or paid prior to April 19, 1977, there is no authority to do so after that date. 58 Comp. Gen. 345 (1979).

Nonpay status before and after holiday (New)

An employee in a nonpay status for the workdays immediately before and after a holiday may not receive compensation for a holiday on which he performed no work since there is no presumption that he would have worked on the holiday if it had been a regular working day. B-187520, February 22, 1977; and B-186687, January 13, 1977. See also 9 Comp. Gen. 350 (1930).

Pay status before or after holiday (New)

An employee in a pay status for the workday immediately before or after a holiday is entitled to pay for the holiday regardless of whether he is on leave without pay or absent immediately succeeding or preceding the holiday. 56 Comp. Gen. 393 (1977) overruling 13 Comp. Gen. 207 (1934) and modifying 45 Comp. Gen. 291 (1965); 18 Comp. Gen. 206 (1938); 16 Comp. Gen. 807 (1937); and 13 Comp. Gen. 206 (1934).

Holiday pay - seasonal employees (New)

Seasonal employees of the IRS who were hired during the tax return filing season for as long as needed were not entitled to be paid for Memorial Day holiday although separated from service on the day following the holiday. At the close of business on the workday preceding the holiday, there remained no further work for the employees and hence the employees were precluded by lack of work

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and not the holiday observance from performing any work. B-193821, June 18, 1979, distinguishing 56 Comp. Gen. 393 (1977) and 45 Comp. Gen. 291 (1965).

"In lieu of" holiday (New)

Under Executive Order No. 11582, February 11, 1971, an employee whose basic workweek is Tuesday through Saturday is entitled to Saturday off, an "in lieu of" holiday, when a holiday falls on Monday, a regular day off. Therefore, when an agency incorrectly requires the employees to take Tuesday as a holiday, the employees are entitled to holiday premium pay for working on Monday and must be paid for Tuesday without a charge to annual leave. B-127474, February 9, 1979.

However, because part-time employees are not entitled to a day "in lieu of" a holiday which does not fall within their basic workweek, part-time employees on a Tuesday-through-Saturday workweek must take annual leave or leave without pay when the work place is closed on Saturday by administrative order due to a Monday holiday. B-192104, September 1, 1978.

D. MILITARY LEAVE

Generally (5-10)

While 5 U.S.C. § 6323 authorizes employees who are in the Reserves of the armed services up to 15 days in a calendar year for active duty without a loss in pay or time in service, this section does not operate to shorten the time required of an employee in an apprentice training period prior to promotion. Therefore, promotions conditioned upon the successful completion of a training program are properly delayed by the amount of time on military leave. B-189002, February 8, 1978.

5 U.S.C. § 6323(a) provides that an employee is entitled to military leave only if he is on active duty under 10 U.S.C. § 270(a). Where an employee is required to attend weekend drills or attend training while in an inactive duty status, he is not entitled to military leave. B-188145, November 15, 1977; and B-187704, May 6, 1977. See also 32 Comp. Gen. 363 (1953). Any absence from work should be charged to annual leave.

Administration of military leave

Under section 6323(a)

Nonwork days (5-14)--See B-188145, November 15, 1977, citing B-133674, December 30, 1957.

Use of annual leave (New)--An employee may be granted annual leave in order to perform military training in excess of the 15 days of military leave provided under section 6323(a). See 49 Comp. Gen. 233 (1969); 47 Comp. Gen. 761 (1968); and 37 Comp. Gen. 255 (1957). However, an employee may not be granted annual leave on a nonworkday in lieu of military leave when military leave is exhausted in order to receive compensation for overtime work scheduled on a nonworkday. B-188145, November 15, 1977.

E. HOME LEAVE

Return to overseas post requirement (5-19)

Transferred to Alaska (New)

Under 5 U.S.C. § 6305, a Federal employee generally is entitled to home leave if he has completed a basic service period of 24 continuous months abroad and it is contemplated that he will serve another tour of duty abroad. Thus, when an employee served 24 months in Puerto Rico and transferred to Alaska, he erroneously was granted home leave because under 5 U.S.C. § 6301, Alaska is not an assignment abroad. While home leave was erroneous, the pay received while on home leave may be waived under 5 U.S.C. § 5584. 56 Comp. Gen. 824 (1977).

Transferred to CONUS (New)

An employee who completed an overseas assignment and was transferred back to the continental United States apparently believed he was entitled to home leave. However, it is not completion of an assignment but rather contemplation of another period of duty abroad that is required for authorized home leave. See 5 C.F.R. § 630.606(c). Therefore, the employee is not entitled to home leave. B-192199, January 31, 1979.

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F. LEAVE WITHOUT PAY

Involuntary charge

Employee incapacitated for duty (5-21)

See also B-181313, May 6, 1977, affirming B-181313, February 7, 1975.

Disability retirement (5-21)

See also B-184522, April 21, 1977, affirming B-184522, March 16, 1976.

Federal employee's compensation (5-21)

See also B-180010.12, March 8, 1979; B-187104, March 8, 1978; B-182608, August 9, 1977; and B-184008, March 7, 1977.

Disability retirement (New)

In order to increase his annuity, an employee of the Air Force who retired on disability in 1976 requested that he be allowed to waive and refund compensation received during a period of disability and be placed on leave without pay. The effect would be to push back the date of retirement to 1974. Refund may not be accepted because there is no authority for an employee to waive and refund compensation when the salary for his position is fixed by or pursuant to legislative authority. B-189897, September 5, 1978.

An employee, who was on leave and approved LWOP pending a determination on his application for disability retirement, including his unsuccessful appeal of the denial of his application, may not have leave recredited or receive backpay since the record does not indicate that his placement on leave and LWOP was involuntary or that he was ready, willing, and able to work during that period. B-128314, January 8, 1979.

Substitution of leave without pay (New)

For annual leave

A reemployed annuitant may not have LWOP retroactively substituted for annual leave because once an employee

elects to use annual leave, the obligation of the United States is discharged and cannot be changed in the absence of a law or regulation so providing. Furthermore, agency policy of requiring the use of annual leave before leave without pay precludes the requested substitution. B-188242, August 9, 1977.

For sick leave

Administrative error--A terminally ill employee who applied for disability retirement and waived his military retired pay, neglected to request LWOP and died while in a sick leave status prior to approval of the disability retirement. The failure to request LWOP resulted in a substantially lower survivor annuity to the employee's widow. Since the failure to request LWOP resulted from the employee's mistaken belief that he had performed all actions necessary to maximize the annuity, the agency may retroactively substitute LWOP for sick leave. B-190204, January 26, 1978.

However, where there are no counseling errors or misunderstandings on the part of the employee, LWOP may not be retroactively substituted for sick leave. 58 Comp. Gen. 661 (1979) distinguishing B-190204, January 26, 1978.

Premature retirement

Generally, an employee's separation date may not be changed except where the separation did not conform to the intention of the parties due to a bona fide mistake. Thus, an employee who retired voluntarily after erroneous advice regarding life insurance and who would have otherwise delayed her retirement may be retroactively restored to the rolls in an LWOP status in order to obtain the required creditable service. B-187596, December 15, 1976.

G. MISCELLANEOUS (New)

Compensatory time for religious holidays

Under the provisions of title IV of the Federal Employees Flexible and Compressed Work Schedules Act of 1978, Pub. L. No. 95-390, 92 Stat. 762, employees may work overtime and earn compensatory time for religious observances requiring the employee's absence from work. See 5 U.S.C. § 5550a and FPM Letter No. 550-72, October 2, 1978.

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