



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Military Leave - Active Duty Spans Two or More Fiscal Years

File: B-246359

Date: August 14, 1992

DIGEST

1. Federal employees who are members of the Reserve or National Guard serving on active military duty which extends into a second or succeeding fiscal year may accrue and use the 15 days of military leave which accrue at the beginning of the second and each succeeding fiscal year without return to civilian status. 70 Comp. Gen. 263 (1991) amplified.

2. When an employee who is a member of the Reserve or National Guard serves on an extended period of active duty that spans two or more fiscal years, such as Operation Desert Shield/Storm, military leave need not be charged for intervening nonworkdays occurring between the beginning of the second or subsequent fiscal year and the date on which the employee begins to use military leave. Each fiscal year may be considered separately for charging periods of military leave under 5 U.S.C. § 6323(a). However, once use of military leave is begun, it must be charged on a calendar day basis including intervening nonworkdays.

3. An agency may allow an employee to choose not to use military leave at all for workdays included in an absence due to military duty but rather to cover the workdays by taking annual leave, leave without pay, compensatory time off, or a combination of these. In such a situation, there need be no charge to military leave for the nonworkdays wholly within the absence.

DECISION

This decision is in response to a submission from the Department of the Air Force asking several questions concerning the accrual and charging of military leave under 5 U.S.C. § 6323(a) for federal employees who are members of the Reserve or National Guard.¹ The questions require further interpretation of the 1980 amendment to the military leave statute as interpreted in 70 Comp. Gen. 263 (1991) and

¹The questions were submitted by the Director of Civilian Personnel, Headquarters U.S. Air Force, Washington, D.C.

described in the Federal Personnel Manual (FPM). We requested and received the views of the Office of Personnel Management (OPM) on the questions submitted.

BACKGROUND

Our decision in 70 Comp. Gen. 263 (1991) was rendered in response to questions presented by OPM which were prompted by the call to active duty of members of the Reserve and National Guard in August and September 1990 for the Desert Shield Operation in the Persian Gulf and who remained on active duty from the 1990 fiscal year into the 1991 fiscal year. That decision interpreted the amendments to 5 U.S.C. § 6323(a) made by Pub. L. No. 96-431, § 1, 94 Stat. 1850 (1980), which allow unused military leave to be carried over into the next fiscal year and combined with the 15 days accrued in the new fiscal year, thus producing a maximum military leave benefit of 30 days which may be used in one fiscal year. The decision held that under the amended statute employees may be continued in military leave status on military leave they had to their credit in the fiscal year they entered active duty, although the military duty to which the leave is applied extends into the next fiscal year. It also held that federal employees serving on active duty which extends into a second fiscal year may accrue and use the 15 days of military leave which accrues at the beginning of the second year without return to civilian status. This was a significant change from former military leave statutes and rendered some of the rules in prior decisions no longer applicable.

OPM has since revised its FPM guidance and issued FPM Letter 630-34, May 2, 1991, consistent with this decision.

QUESTIONS AND ANALYSIS

The questions submitted by the Air Force relate to the issues addressed in our 1991 decision and the revised FPM guidance provided by OPM. In our 1991 decision we specifically dealt with members whose active duty spanned two fiscal years, 1990-1991. The first two questions the Air Force now presents concern those members who remained on active duty through fiscal years 1990 and 1991, into fiscal year 1992, and possibly beyond. Those questions are as follows:

QUESTION 1. If the military duty extends further, does the employee accrue 15 days of military leave at the beginning of the third/fourth year of military duty?

QUESTION 2. If the answer to question 1 is yes, is the employee permitted to use the third/fourth year accrual without returning to civilian status?

For the reasons that follow, both questions are answered in the affirmative. OPM concurs in these answers.

As we noted in the 1991 decision, in order to achieve greater flexibility and avoid the loss of military leave, Congress provided a different method for its accrual and use in the 1980 amendment to the military leave statute. Nothing in the amendment nor its legislative history indicates that Congress intended to limit military leave accrual to a fixed number of years. Without such a limitation, military leave for a federal employee on active military duty accrues according to the statute at the rate of 15 days for each fiscal year for as long as the individual remains a federal employee.

While the Desert Shield/Desert Storm Operation created an unusually long, continuous period for active duty in which most of the members of the Reserve or National Guard were not separated from their federal civilian jobs but were placed in a leave-without-pay (military furlough) status after their military leave was exhausted, OPM states that federal agencies should be faced with this situation only in particular circumstances after the effect of FPM Letter 353-5, March 19, 1990. That letter provides that only those employees who perform active duty or active duty for training of relatively short duration should be placed on leave without pay or military furlough. Other individuals on extended periods of active duty should be separated, except during periods of war or national emergency.

In any event, as outlined above, under the statute a federal employee would be permitted to use the third and subsequent years' accruals without returning to civilian status. An employee/reservist on continuous active duty theoretically would be eligible for military leave every fiscal year indefinitely, as long as he/she is not separated from his/her civilian position.

Questions 3 and 4 arise, the Air Force indicates, because we have long held that in charging military leave any intervening civilian nonworkdays occurring during periods of military duty must be charged as military leave and annual leave may not be used in such a way as to avoid this charge. Questions 3 and 4 are as follows:

QUESTION 3. If the employee, who is entitled to accrue and use 15 days of military leave accruing at the beginning of the second fiscal year, elects to use the second fiscal year amount, would an

agency be required to charge military leave for any intervening nonworkdays occurring since the beginning of the second fiscal year (i.e. employee elects to use second fiscal year amount starting 4 November 1991; intervening nonworkdays since beginning of second fiscal year are 5-6, 12-13-14, 19-20, 26-27 October, and 2-3 November)?

QUESTION 4. If an employee covers his/her entire period of absence on military duty by using annual leave, leave without pay, compensatory time off or a combination of these types of leave, would it be necessary to charge military leave for nonworkdays that fall wholly within the period of absence?

We have long held that military leave is to be charged on a calendar day basis and, thus, when an employee uses it for a period of active duty, it also must be charged for each nonworkday falling within the period it is to cover. See e.g., 61 Comp. Gen. 558 (1982); Reginald L. Campbell, 60 Comp. Gen. 381 (1981), and cases cited therein. Therefore, military leave must be charged for an intervening holiday or weekend day although such day would not be a workday for the member in his civilian job. Reginald L. Campbell, 60 Comp. Gen. at 384.

We have also held that ordinarily military leave should be charged to the first 15 days of active duty and then the following days of continuing active duty should be charged to annual leave or leave without pay. George McMillian, B-211249, Sept. 20, 1983. However, we have recognized that this is a matter over which agencies have discretion, and we have not objected to an agency practice allowing employees to substitute annual leave for military leave. See e.g., B-156474, Apr. 27, 1965. Nevertheless, annual leave may not be used in such a way as to avoid charges to military leave for intervening nonworkdays, as discussed above. Charles W. Haas, B-212851, Jan. 4, 1984; and B-141593, Jan. 7, 1960.

We have held that these long-standing principles were not changed by the 1980 amendments to 5 U.S.C. § 6323. Charles W. Haas, B-212851, supra; and George McMillian, B-211249, supra. The issue here, however, is how these principles are to be applied in light of our holding in 70 Comp. Gen. 263, supra, and in relation to the answers to questions 1 and 2 above, that 15 days of military leave accrues and is available for use at the beginning of each successive fiscal year spanned by a continuing period of active duty.

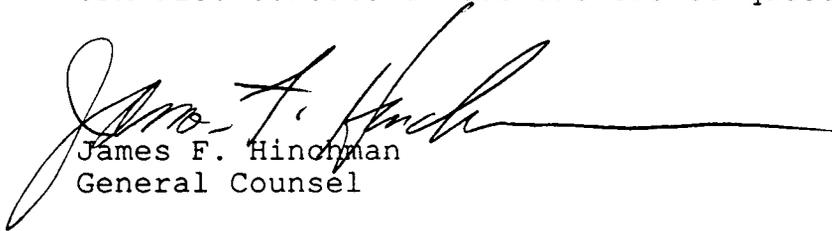
The unstated assumption in question 3 is that the employee called to long-term active duty for Desert Shield exhausted his accrued military leave in fiscal year 1991. When fiscal

year 1992 began he elected to use annual leave and/or leave-without-pay for civilian workdays through November 3, and then to use his fiscal year 1992 military leave beginning November 4. In such a situation where a member on extended active duty has exhausted his military leave prior to the end of a fiscal year, but remains on active duty into the next fiscal year and accrues an additional 15 days, we believe the leave, newly accrued at the beginning of the next fiscal year, need not necessarily be immediately applied as of October 1 to the continuing active duty. That is, each fiscal year may be considered a separate period for application of the principles discussed above. The use of each newly accruing period of military leave is subject to the agency's discretion to allow the member to take annual leave or leave-without-pay prior to use of the military leave without charging nonworkdays to military leave. However, once the use of the military leave is begun, it is to be charged in the usual manner on a calendar basis as discussed above including intervening nonworkdays.

While we recognize that this is not a strict application of the rules generally applicable to charging military leave to a single period of continuous active duty, we believe it is appropriate for long-term periods such as in connection with Desert Shield/Storm that span fiscal years, and it conforms to the increased flexibility intended by the 1980 amendment to the statute.² On this basis, question 3 is answered in the negative; the intervening nonworkdays from the beginning of the new fiscal year through November 3 need not be charged to military leave.

For the same reasons, question 4 is also answered in the negative. The agency has the discretion to allow the employee to use other leave for a period of active duty and allow his military leave to remain to his credit for future use.

OPM also concurs in our answers to questions 3 and 4.


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²See the discussion in 70 Comp. Gen. 263, 267, concerning the intent of Congress in enacting the 1980 amendment.