

DECISION



THE COMPTROLLER GENERAL OF THE UNITED STATES WASHINGTON, D.C. 20548

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FILE: B-193559

DATE: April 27, 1979

MATTER ^{OR} _(M)

[Claim for Recredit of]
William O. Garrison - *[Involuntary Sick and Annual Leave]*

DIGEST:

Employee performs duties for which agency requires safety goggles. He was placed on involuntary sick and annual leave after medical determination that due to vision impairment he should not be required to wear safety goggles. Claim for recredit of sick leave is denied, since agency may place employee on involuntary leave when medical evidence indicates that he is incapacitated for performance of assigned duties.

By letter dated October 11, 1978, Mr. William O. Garrison, an employee of the Department of the Navy, AGC 00001 has appealed our Claims Division's disallowance of his claim for the recredit of involuntary sick and annual leave charged during the period August 29, 1976, through November 7, 1976.

The record shows that Mr. Garrison, who is employed as a painter at the Naval Air Rework Facility, Marine Corps Air Station, Cherry Point, North Carolina, ^{DLG} ₀₀₂₃₈ has a non-occupational visual impairment of both eyes. He must wear thick eyeglasses. His duties include spraying aircraft fuel tanks with polyurethane paint for which he is required to wear a full face respirator. Personnel working in the paint shop are required to wear safety goggles. Mr. Garrison requested his employer to provide him with special glasses to wear under the respirator. His supervisor provided Mr. Garrison with plastic goggles to wear over his eyeglasses. The goggles fogged up his eyeglasses and he was unable to paint.

An agency medical evaluation of August 26, 1976, concluded that Mr. Garrison had partial visual acuity and depth perception. It was recommended that he should not be required to wear goggles due to his restricted field of vision. It was determined that he was not physically qualified to safely perform his duties.

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The Division Directors in the Production Department were contacted in an effort to place Mr. Garrison in another suitable position. There was no such vacancy and on August 27, 1976, he was placed on sick leave beginning August 30, 1976. On October 7, 1976, he was granted advance sick leave and during that time a request for prescription safety glasses was approved by the safety officer. On November 8, 1976, Mr. Garrison was returned to duty and detailed to the position of Preservation Packager pending the receipt of the prescription safety glasses. Upon the receipt of the safety glasses, he was returned to his position as a painter on December 9, 1976.

The Claims Division disallowed Mr. Garrison's claim on the basis that the evidence of record did not establish that he was able to perform the full ranges of his duties during the period he was on leave status.

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. Matter of Claudia M. Ferguson, B-186197, July 28, 1976 and Matter of William J. Heisler, B-181313, February 7, 1975.

Mr. Garrison stated in his letters to our Office dated February 14, 1978, and October 11, 1978, that the agency had reinstated him to his duties in the paint shop although there had not been any change in his physical condition and the agency had not provided him with prescription safety glasses. The agency report, however, states that he was returned to his position as a painter on December 9, 1976, after receipt of prescription safety glasses.

We decide cases involving claims against the Government on the basis of the written record. The claimant has the burden of proof of establishing the liability of the United States and the claimant's right to payment. 4 C.F.R. § 31.7. Therefore, if the written record before us presents a material dispute of fact that cannot be resolved without an adversary hearing, we are required to deny the claim

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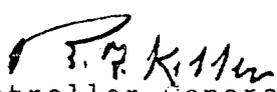
because the claimant has failed to establish his claim. Here the agency administrative report is based on the entry of December 9, 1976, in the Chronological Record of Medical Care of Mr. Garrison. Accordingly the disallowance of his claim is sustained.

Mr. Garrison asks whether the agency's actions have complied with the Occupational Safety and Health Administration's Standards at 29 C.F.R. § 1910.133(1978) which sets forth standards for protective eye and face equipment. Under 29 U.S.C. § 668 and Executive Order No. 11807, September 28, 1974, the head of each agency is responsible for the establishment and maintenance of an effective and comprehensive occupational health and safety program which is consistent with the standards issued by the Secretary of Labor under section 6 of the Occupational Safety and Health Act (Act), 29 U.S.C. § 655. Neither the Act nor Executive Order No. 11807 provides our Office authority to determine whether another agency has complied with its health and safety standards.

Mr. Garrison asks whether the agency has violated Article XXVII, Safety and Health, Section 13, of the applicable labor management agreement (agreement) which provides in part that the employer agrees to furnish suitable eye protection, including prescription lenses, to those employees working in areas or occupations deemed hazardous by the employer. Article XXII of the agreement provides that the grievance procedure set forth therein is to be the sole procedure to resolve a dispute over the interpretation or application of the agreement.

In view of the above, the disallowance of the claim for recredit of sick and annual leave is sustained.

WAS


Deputy Comptroller General
of the United States