

**DECISION**

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

**FILE:** B-217845**DATE:** *September 18, 1985***MATTER OF:** C. Robert Curran**DIGEST:**

1. Employee who commutes to work from a residence in Virginia and maintains another residence in New Jersey was called upon to serve as a juror in New Jersey. The employee is entitled to court leave under 5 U.S.C. § 6322 even though he might have been excused from jury duty. When properly summoned to serve as a juror, employee's failure to advise the court of facts that would have exempted or excused him from jury service does not defeat his entitlement to court leave. 27 Comp. Gen. 83, 89 (1947).
2. Employee whose permanent duty station was Washington, D.C., was summoned to jury duty in New Jersey for a one-week period beginning on a Monday. Employee is entitled to court leave for the Friday he was excused from jury duty under holding in 26 Comp. Gen. 413 (1946). In view of the substantial distance involved, it would have imposed a hardship to have required the employee to return to his permanent duty station following a day of jury service on Thursday to report for duty on Friday.

This action is in response to a request for a decision concerning a Federal employee's entitlement to court leave for a period of jury service. The request is submitted by the American Federation of Government Employees and the Veterans Administration under the procedures provided in

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4 C.F.R. §§ 22.1-22.9 (1985).<sup>1/</sup> We find that the employee is entitled to court leave for the period he was summoned to jury duty in New Jersey even though he did not advise the court of facts that might have excused him from jury service.

Mr. C. Robert Curran is an employee of the Veterans Administration, Washington Regional Office, Washington, D.C. In September 1984, Mr. Curran informed the agency that he was required to serve on jury duty in New Jersey for a one-week period commencing September 17, 1984, and requested that he be granted court leave.

Because Mr. Curran had a residence in Woodbridge, Virginia, the agency contacted the Clerk of the Court of Monmouth, New Jersey, and ascertained that an individual from New Jersey who is now living in Virginia, could be excused from jury duty. Based on its understanding that Mr. Curran was not required to serve as a juror, but did so by choice, the agency denied his request for court leave. Mr. Curran was charged 32 hours of leave without pay for the Monday through Friday he served as a juror, and 8 hours of annual leave for the Friday following his last day of jury service. His claim is for 40 hours of court leave in lieu of these charges for annual leave and leave without pay.

Mr. Curran asserts that although he had a local address and commutes to Washington from his Virginia residence, he is a resident of New Jersey. As evidence of his residency, he has provided copies of his New Jersey driver's license and New Jersey vehicle and voter registration cards all indicating an address in Long Branch, New Jersey. The agency has not questioned Mr. Curran's claim that he maintains a New Jersey residency. Its position is that Mr. Curran was not required to serve as a juror in New Jersey since he has a Virginia residence and may be called upon to serve as a juror in Virginia.

Court leave is the authorized absence of an employee from work without loss of or reduction in pay or benefits, for jury duty or as a witness for a State or local

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<sup>1/</sup> The request for a decision was made by M. J. McGowan, Director, Finance Service, Office of Budget and Finance, Veterans Administration, Washington, D.C.

government in a nonofficial capacity. Authority for granting court leave is found at 5 U.S.C. § 6322 (1982) which provides in pertinent part:

**"§ 6322. Leave for jury or witness service;  
official duty status for certain  
witness service**

"(a) An employee as defined by section 2105 of this title (except an individual whose pay is disbursed by the Secretary of the Senate or the Clerk of the House of Representatives) or an individual employed by the government of the District of Columbia is entitled to leave, without loss of, or reduction in, pay, leave to which he otherwise is entitled, credit for time or service, or performance of efficiency rating, during a period of absence with respect to which he is summoned, in connection with a judicial proceeding, by a court or authority responsible for the conduct of that proceeding, to serve--

"(1) as a juror \* \* \*"

Under the statute, an employee is entitled to leave without reduction in pay or benefits for a period of absence during which he is (1) summoned, (2) in connection with a judicial proceeding by a court, (3) to serve as a juror. Therefore, it appears that when an individual is so summoned, the statute entitles him to court leave, regardless of whether he may be excused from the jury duty because of the distance he must travel or for some other reason. We have recognized that an employee's failure to advise the court of an applicable exemption from the requirement to perform jury service does not defeat his entitlement to court leave. 27 Comp. Gen. 83, 89 (1947). A review of the relevant legislative history shows that the statute was meant to encourage participation in the judicial process. It does not limit court leave to jury service in the vicinity of one's permanent duty station but authorizes leave for jury service in connection with any judicial proceeding.

The guidelines issued by the Office of Personnel Management<sup>2/</sup> indicated that court leave should be granted to an "employee who is under proper summons from a court to serve on a jury." Federal Personnel Manual, Chapter 630, Subchapter S10-2(e). The submission indicates that there is some question on the part of the agency as to the propriety of the summons issued by the New Jersey court in view of the fact that Mr. Curran maintains a Virginia residence. The qualifications for jury service in New Jersey include the requirement that the person summoned as a juror be a resident of the county from which he shall be taken.<sup>3/</sup> The qualifications for jury service in the State of Virginia similarly require that the employee have been a resident of the Commonwealth for 1 year and of the county, city or town for 6 months.<sup>4/</sup> As the agency has noted, it is possible that Mr. Curran may be summoned as a juror by both jurisdictions since it appears that he maintains a place of residence in both states.

The concept of residency is not exclusive and one may have more than one residence. 25 Am. Jur. 2d Domicil 4 (1974). Where, as here, there is evidence that an employee maintains more than one residence, he should be granted court leave for jury duty performed pursuant to a summons issued by any jurisdiction in which he maintains a residence. Because the standards vary from jurisdiction to jurisdiction, an employee's qualification as a juror is a matter for judicial determination.

Since Mr. Curran was issued a proper summons and performed jury duty from Monday through Thursday, September 17-10, 1984, he is entitled to 32 hours of court leave for his absence on those days. We have held that an agency should require an employee to return to duty or be

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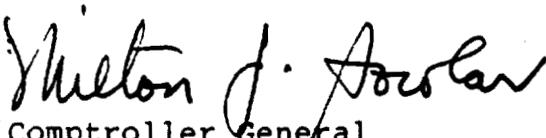
<sup>2/</sup> While implementing regulations have not been promulgated, the Office of Personnel Management has issued guidelines for the granting of court leave. See Federal Personnel Manual (FPM), Chapter 630, Subchapter S10 (Inst. 168, March 15, 1972) and FPM Supplement 990-2, Book 630, Subchapter S10 (Inst. 43, March 15, 1972).

<sup>3/</sup> New Jersey Statutes Annotated 2A:69-1.

<sup>4/</sup> Code of Virginia, Section 8.01-345.

charged annual leave if he is excused from jury service for all or a substantial part of a day. However, where hardship would result, the employee may not be required to return to duty and should be granted court leave. 26 Comp. Gen. 413 (1946); see also Nora Ashe, 60 Comp. Gen. 412 (1981). Mr. Curran was summoned to jury duty for a one-week period beginning Monday, September 17, 1984, and he was released after performing jury duty on Thursday, September 20, 1984. Since the distance from the Monmouth County Courthouse to Washington, D.C., is in excess of 200 miles, it would have imposed a hardship on Mr. Curran to have required him to return to his duty station Thursday night to report for duty on Friday, September 21, 1984. Accordingly, he should be granted court leave for this day even though he was excused from jury duty.

Accordingly, Mr. Curran is entitled to court leave for the 40 hours for which he was charged leave without pay or annual leave.

  
Acting Comptroller General  
of the United States