

DECISION

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

60379

FILE: B-184706

DATE: JAN 12 1976

MATTER OF:

Dora M. McDonald - Involuntary Leave

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DIGEST:

Department of the Air Force applied for employee's disability retirement. Employee was placed on involuntary leave because of medical opinion that employee was incapable of performing the duties of her position. Employee is not entitled to reimbursement for loss of pay for period she was in leave-without-pay status even though Civil Service Commission later determined that the employee was not shown by medical evidence to suffer from total disability for useful and efficient service. The Department of the Air Force's placement of the employee on involuntary leave was not unjustified or unwarranted personnel action within backpay statute in that it was based on the medical determination that the employee was incapacitated for duty.

Mrs. Dora M. McDonald has requested reconsideration of her claim for backpay and restoration of leave for the period June 25, 1973, through June 6, 1974, during which time she was involuntarily placed on leave by the Department of the Air Force pending a Civil Service Commission (CSC) decision on an application filed by McConnell Air Force Base (AFB) for her disability retirement.

The record shows that on May 1, 1973, the Department of the Air Force, McConnell AFB, Kansas, took action to remove Dora M. McDonald from her position as a Licensed Practical Nurse, GS-621-04. She appealed this decision to the Civil Service Commission which directed that the removal action be cancelled and that she be restored to her position retroactively to May 1, 1973. On June 25, 1973, when Mrs. McDonald returned to duty, she was advised in writing that medical information obtained by the Hospital Commander during her absence indicated that she was incapable of performing the duties of her position. At that time Mrs. McDonald was involuntarily placed on sick leave for the remainder of the day and was continued on sick leave or annual leave until her leave accumulation was exhausted on August 7, 1973. This action was taken in accordance with Subchapter S10 of the Federal Personnel Manual Supplement 831-1. See also 5 C.F.R. § 831.1206. On August 8, 1973, Mrs. McDonald was placed

on leave without pay pending further medical evaluation and adjudication by the Civil Service Commission of the application filed by McConnell AFB for her disability retirement.

On June 7, 1974, the Civilian Personnel Office, McConnell AFB, received notification from the Civil Service Commission that the application for the employee's disability retirement had been disallowed because total disability for useful and efficient service had not been shown by the medical evidence presented. Mrs. McDonald was restored to active duty on July 7, 1974. She claims the pay and leave she lost during the application and adjudication process. This Office disallowed Mrs. McDonald's claim in a Settlement Certificate dated May 1, 1975.

The record further shows that the Department of the Air Force conducted an extensive investigation, including professional medical evaluations, in reaching its determination that Mrs. McDonald was incapacitated for duty prior to placing her on leave without her consent. The claimant has obtained a medical statement from one doctor to the effect that, as of September 17, 1973, there was no evidence of any emotional disorder or any hint of mental or intellectual incompetence.

The Back Pay Act of 1966, 5 U.S.C. § 5596 (1970), provides for backpay where an unjustified or unwarranted personnel action has resulted in the withdrawal or reduction of pay to an employee. However, paragraph S8-5m of Book 550, Supplement 990-2 of the Federal Personnel Manual, states that placing an employee on involuntary leave, pending a decision of the Civil Service Commission on an agency-filed application for disability retirement, is not considered to constitute an unjustified or unwarranted action so as to entitle the employee to backpay when the administrative officers determine, upon competent medical evidence, that the employee is incapacitated for the performance of assigned duties.

We have applied the rule stated in the Federal Personnel Manual. We have held that an employee may be placed on leave without his or her consent when administrative officers determine, upon the basis of competent medical findings, that the employee is incapacitated for the performance of the assigned duties and that the involuntary leave does not, under such circumstances, constitute an unjustified or unwarranted action within the meaning of the backpay provisions of the applicable statutes. 41 Comp. Gen. 774 (1962), B-181313, February 7, 1975.

In view of the medical conclusions as to fitness for duty relied upon by the Air Force, we may not substitute our judgment for that of the

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agency and rule that its determination concerning the claimant's incapacity for duty was arbitrary or capricious.

Accordingly, the conclusion reached in our earlier decision is sustained.

R. F. KELLER

Deputy Comptroller General
of the United States