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DECISION



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

FILE: B-201099

DATE: December 22, 1981

MATTER OF: Use of Sick Leave for Treatment by Marriage/
Family Counselor

DIGEST: Employee requested sick leave for period of emotional stress and request was certified by licensed marriage/family counselor. Since such counselor is considered "practitioner" who may certify for use of sick leave, agency may accept certification as evidence of reason for absence.

The issue in this decision is whether an employee may properly charge sick leave during a period of emotional stress while she was under the care of a licensed marriage/family counselor. We hold that since licensed marriage/family counselors are considered to be "practitioners" capable of certifying the employee's incapacitation to work, we have no objection to the agency granting the use of sick leave based upon this evidence.

This decision is in response to a request from an authorized certifying officer, reference W1819 (WR)AF, National Park Service, Western Region, Department of the Interior. The request from Interior states that an employee requested sick leave for the period from April 14 through April 22, 1980, due to emotional stress in her personal life. The employee's application for leave was signed by a licensed marriage/family counselor certifying that the employee was under his professional care during that period.

The agency questions whether a marriage counselor qualifies as a "practitioner" for the purpose of certifying sick leave. The agency obtained an advisory opinion from the Office of Personnel Management (OPM) that a marriage counselor, licensed by the state, is legally defined as a practitioner for the purpose of certifying sick leave. In addition, under Interior regulations a troubled employee whose work performance or behavior is adversely affected by personal problems such as alcoholism, drug abuse, and mental health or family problems, may have sick, annual, or leave without pay approved for treatment of those problems.

On the other hand, the request from Interior cites a decision of our Office, B-181686 (Charles T. Turner, published at 55 Comp. Gen. 183 (1975)), for the proposition that charges of sick leave must specifically and literally meet the criteria contained in the applicable OPM regulation.

We requested comments on this matter from OPM. The reply from OPM dated November 4, 1981, states that in accordance with 5 C.F.R. § 630.403 sick leave must be supported by evidence that is administratively acceptable and that under 5 C.F.R. § 630.201(b)(6) a "medical certificate" is defined as a written statement signed by a registered practicing physician or other practitioner certifying to the incapacitation, examination, treatment, or period of disability of the employee. The report continues that since it is discretionary with the agency to determine if a medical certificate is required or is acceptable, OPM has not restricted the definition of "practitioners" and has considered as acceptable certificates from Christian Science practitioners, therapists, alcohol or drug abuse counselors, psychologists, or psychiatric social workers so long as the incapacitation or treatment is within their authority or ability to judge.

However, the report from OPM states that while a certificate from a licensed marriage counselor would normally be acceptable evidence of treatment, it is discretionary with the agency whether such a certificate is acceptable as evidence of incapacitation beyond the period of counseling. Thus, the report concludes that OPM would not object to an agency either accepting such a certificate as evidence of incapacitation or requiring further documentation of the employee's emotional or physical condition from a physician or psychologist.

The use of sick leave is governed by the provisions of 5 U.S.C. § 6307 (1976), and regulations implemented by OPM pursuant to 5 U.S.C. § 6311 (1976). Under 5 C.F.R. § 630.401 agencies shall grant sick leave when the employee (1) receives medical examination or treatment, (2) is incapacitated for the performance of duties by sickness, injury, or pregnancy and confinement, (3) is attending to a family member with a contagious disease, or (4) would jeopardize the health of others at the work site due to exposure to a contagious disease. The question presented is not whether

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the employee was incapacitated for the performance of duties but whether the employee has presented acceptable evidence of the illness as required by 5 C.F.R. § 630.403.

Our prior decision in Turner, supra, involved a question of whether the employee was incapacitated to perform his duties within the meaning of 5 C.F.R. § 630.401, not whether there was sufficient evidence to support the charge to sick leave. See also William Stuart, B-195042, August 6, 1979, denying sick leave to a male employee who assisted his wife at the delivery of their child.

As to what constitutes acceptable evidence for the charge of sick leave, we would agree with the report from OPM that a licensed marriage/family counselor may be considered a "practitioner" for matters which are within that person's authority and ability to judge. While it is within the discretion of the agency to determine whether this certificate in the case before us is to be considered acceptable evidence, we would not object to a charge to sick leave based upon this certification.

Harry R. Van Cleave
For the Comptroller General
of the United States