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DECISION

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

FILE: B-206544 **DATE:** July 7, 1982

MATTER OF: Laudis B. Patterson - Restoration of Sick Leave

DIGEST: Employee was placed on involuntary sick leave after a federal medical officer found that the employee had suffered a hearing loss and because the employee's job required work in noise hazardous areas. Sick leave may not be recredited to the employee's account as the placement of the employee on involuntary sick leave was based on competent medical advice. Subsequent testing, which showed that the employee's hearing was not permanently impaired and that he could be returned to his duties, does not invalidate the earlier findings.

Mr. Laudis B. Patterson, an Air Force employee, appeals our Claims Group's denial of his claim for recredit of 96 hours of sick leave used while he was placed on involuntary leave. For the following reasons we affirm our Claims Group's denial of Mr. Patterson's claim.

By letter dated October 5, 1976, Dr. H. A. Wurst, a federal medical officer, directed that Mr. Patterson, a sheet metal mechanic at the Oklahoma City Air Logistics Center, be removed from noise hazardous areas for 30 days. Dr. Wurst based this opinion on the results of two audiometric tests, which indicated that Mr. Patterson had sustained a threshold shift in his hearing. Dr. Wurst directed that Mr. Patterson's hearing be reevaluated 30 days after removal from noise hazardous areas.

Mr. Patterson was detailed to clerical duties in another office from October 7 to October 18, 1976. On October 19, 1976, Mr. Patterson was placed on enforced sick leave because his duties as a sheet metal mechanic required exposure to noise hazards and no other duties were available to which he could be detailed.

Based on further evaluations and testing, it was later determined that Mr. Patterson's hearing condition did not require permanent removal from noise hazardous

areas. Mr. Patterson returned to duty on November 5, 1976.

Our Claims Group denied Mr. Patterson's claim for recredit of the sick leave he was forced to use. The denial was based on the finding by proper medical authority that Mr. Patterson was physically disqualified to perform the full range of duties of his position during the period of leave. The Claims Group found no evidence that he was placed on leave as a disciplinary measure.

Mr. Patterson appeals the denial of his claim by providing documents showing that a claim he had filed for hearing loss under the Federal Employees Compensation Act was denied. The Department of Labor's Office of Workers' Compensation Programs found that Mr. Patterson has no ratable hearing loss. Mr. Patterson also alleges that subsequent tests of his hearing showed no hearing loss sufficient for management to have placed him on enforced leave.

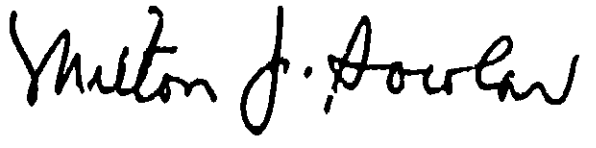
The general rule applied by our Office is that an employee may be placed on leave without his consent when administrative officers determine, upon the basis of competent medical findings, that the employee is incapacitated for the performance of his assigned duties, and that the involuntary leave does not, under such circumstances, constitute an unjustified or unwarranted removal or suspension without pay within the meaning of the backpay provisions of the applicable statutes. 41 Comp. Gen. 774 (1962).

In this case a medical officer found, based on medical tests, that Mr. Patterson had suffered a hearing loss. Mr. Patterson was thus not allowed to perform his regular duties. Although later tests found that Mr. Patterson's hearing was not permanently impaired, those tests do not invalidate the findings based on the the earlier tests. No contrary medical evidence was presented during the period of time Mr. Patterson was on enforced sick leave which would show that Mr. Patterson could have worked in noise hazardous areas during that time. There is no indication that the medical advice in the first instance was improper or not based on good judgment, so that the later contrary advice could be regarded

as correcting an improper personnel action. Connie R. Cecalas, B-184522, March 16, 1976, reconsideration denied April 21, 1977.

It would appear that Mr. Patterson's case is analogous to the situation where an employee is suspended from work or separated because of a medical disability and then is permitted to return to work when the disability disappears. In such situations the employee is not entitled to recover for the period of the suspension. William J. Heisler, B-181313, February 7, 1975.

Accordingly, there is no legal basis to restore sick leave used for the period during which Mr. Patterson was placed on involuntary leave. Our Claims Group's settlement is sustained.



Acting Comptroller General
of the United States