

DECISION

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

L. G. 6507

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FILE: B-207672**DATE:** September 28, 1983**MATTER OF:** Walter R. Boehmer, Jr. - Administrative
Leave Granted During Extended Period of
Disability**DIGEST:**

Employee who sustained work-related injury was placed on administrative leave by the agency for a period of almost 4 months. The agency had no authority for granting the employee administrative leave for such an extended absence resulting from injury. Accordingly, the agency should rescind the administrative leave and charge sick and annual leave for the period in question. Since the employee's leave balances were sufficient to cover only a portion of his 4-month absence from work, the agency should retroactively place him on leave without pay for the remainder of that period.

Michael J. Connolly, General Counsel of the Equal Employment Opportunity Commission (EEOC), requests our decision concerning reconstruction of the pay and leave accounts of Mr. Walter R. Boehmer, Jr., a former EEOC employee who was erroneously placed on extended administrative leave when he suffered a recurrence of a work-related injury. Since the agency had no authority to place the employee on administrative leave for an extended period, we hold that it should now rescind the leave it erroneously granted. In reconstructing Mr. Boehmer's pay and leave accounts, the agency should charge him the sick and annual leave he had accrued prior to his absence, and retroactively place him on leave without pay for the remainder of the period in question.

Mr. Boehmer was employed by the EEOC under a temporary appointment, effective December 8, 1975. On December 15, 1976, he sustained an on-the-job injury. Shortly thereafter, on December 20, 1976, he filed Form CA1 and 2, "Federal Employee's Notice of Injury or Occupational Disease," with EEOC's Personnel Office, in accordance with the procedures set forth in the Federal Personnel Manual (FPM) Chapter 810.

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The EEOC then forwarded the completed form to the Department of Labor's Office of Workers' Compensation Programs (OWCP) for processing. Thereafter, Mr. Boehmer's physicians advised OWCP that he was unable to perform his regular work, and, as a result, OWCP placed Mr. Boehmer in a Continuation of Pay (COP) status from December 16, 1976, through January 29, 1977. Despite his COP status, Mr. Boehmer reported to work and performed his regular duties from December 16, 1976, to January 29, 1977, except for several absences when he reported to his physicians to undergo medical examinations or treatment.

Thereafter, on August 14, 1977, Mr. Boehmer claimed that he suffered a recurrence of his injury. From that date until December 7, 1977, when his temporary appointment expired, Mr. Boehmer did not report back to work. During those months, the agency placed Mr. Boehmer on administrative leave. Accordingly, he continued to receive his full pay and accumulate annual and sick leave during that time.

On December 7, 1977, Mr. Boehmer's temporary appointment expired. Shortly thereafter, he filed a "Claim for Compensation on Account of Traumatic Injury," Form CA7. In response to this claim, OWCP agreed to compensate Mr. Boehmer for the period of time after December 7, 1977, when his appointment expired, since he was then no longer receiving pay and benefits.

Later, however, when the agency was processing Mr. Boehmer's separation papers, it discovered that he had been improperly placed on administrative leave from August through December 1977. In its submission to this Office, the agency states as follows:

"* * * It is clear that upon recurrence of his disability, Mr. Boehmer should have been placed in leave without pay status and directed to file a compensation claim with OWCP. See FPM Chapter 810, Paragraph 5-8. It is also clear that EEOC had no authority to grant him administrative leave for the recurrence of a work-related injury or for any purpose for such an extended period of time. See FPM Supplement 990-2, Book

630, subchapter S11; * * * Because of EEOC's error, Mr. Boehmer collected full pay and accrued leave for four months while he was disabled."

The EEOC attempted to resolve Mr. Boehmer's case with OWCP, but the two agencies have been unable to reach agreement as to the proper action to be taken to correct the matter. Mr. Boehmer now has requested a lump-sum payment for his unused accrued annual leave.

Against this background, EEOC poses the following questions:

"1) Can an agency rescind administrative leave after it has been granted and used and reclaim pay and benefits earned while in that status?

"2) If so, should EEOC amend Mr. Boehmer's records by a) converting the administrative leave to leave without pay, b) cancelling leave accrued during that period, and c) issuing a demand for repayment of salary?

"3) Should EEOC set off against any demand for repayment of salary, the amount of any unused sick or annual leave which had accrued as of [August 14, 1977]?

"4) Can EEOC either defer collection of such repayment pending the filing and processing of a claim for compensation with OWCP or set off against any demand for repayment of salary, the estimated amount of compensation due for the period?"

There is no general statutory authority for what is commonly referred to as administrative leave, under which Federal employees may be excused from their official duties without loss of pay or charge to leave. Nevertheless, it has been recognized that in the absence of specific statutory authority, the head of an agency may, in certain situations, excuse an employee for brief periods of time without a charge to leave or loss of pay. Some of the more

common situations in which agencies generally excuse absence without a charge to leave are discussed in FPM Supplement 990-2, Book 630, subchapter S11-5. These include blood donations, tardiness and brief absence, taking examinations, attending conferences or conventions, and representing employee organizations. See Edward McCarthy, B-192510, April 6, 1979.

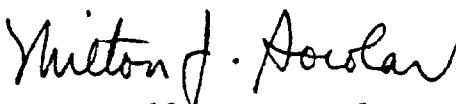
We have held that, in view of the specific situations in which administrative leave may be granted, there is no general authority for an agency to grant administrative leave for an extended period of time. See 53 Comp. Gen. 1054 (1974), and McCarthy, above. Accordingly, Mr. Boehmer was not entitled to be placed on administrative leave between August 14 and December 7, 1977, the period during which he suffered a recurrence of his work-related injury.

Since Mr. Boehmer was in fact carried in an administrative leave status, i.e., not charged annual or sick leave nor placed on leave without pay incident to receipt of workers' compensation, the agency should rescind the administrative leave granted during the period August 14 to December 7, 1977, and should charge available sick and annual leave for that period. McCarthy, above. The record indicates that, as of August 14, 1977, Mr. Boehmer had accumulated 23 hours of sick leave and 80 hours of annual leave. Since the employee's sick and annual leave balances are sufficient to cover only a portion (less than 3 weeks) of his 4-month absence from work, the agency should retroactively place him on leave without pay for the remainder of the period in question.

It appears that, during the period Mr. Boehmer was on administrative leave, he accrued approximately 22 hours of sick leave and 22 hours of annual leave. When Mr. Boehmer's leave record is reconstructed, he may retain credit for the leave that he would accrue during the 3-week period for which he will be charged sick and annual leave. However, the remainder of the sick and annual leave currently credited to his account is attributable to the period for which he will now be charged leave without pay, and that sick and annual leave must be canceled. Furthermore, the agency's substitution of leave without pay for part of the

period Mr. Boehmer was placed on administrative leave will result in the employee's indebtedness for the pay and benefits he received during that time. Mr. Boehmer may request waiver of that indebtedness under the provisions of 5 U.S.C. § 5584 (1976), in accordance with our procedures outlined in 4 C.F.R. Parts 91 and 92 (1983).

In the event collection action is necessary, EEOC questions whether collection may be deferred pending the processing and resolution of Mr. Boehmer's claim for workers' compensation, and whether the estimated amount of such compensation may be set off against the employee's indebtedness for erroneous payments of pay. The Department of Labor has informally advised us that, upon conversion of the administrative leave erroneously granted to Mr. Boehmer to leave without pay, and validation of his disability, the employee may request that the amount of workers' compensation awarded to him be paid directly to EEOC. This procedure would enable EEOC to deduct the amount of the workers' compensation award from the employee's indebtedness for erroneous salary payments. We note, however, that the definitive answer to EEOC's question must be supplied by the Department of Labor.

for 
Comptroller General
of the United States