

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

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FILE:

DATE:

OCT 21 1975 097808

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MATTER OF:

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DIGEST:

**Phoebe N. Nelson-Conversion of annual Leave
to sick Leave**

Employee entitled to sick leave specifically requested that 142 hours of time be charged to annual leave. Since employee actually used the 142 hours rather than forfeiting it due to the limitation on carry-over of annual leave, she is not entitled to restoration of such leave under Pub. L. 93-181.

This decision is in response to a request by the United States Commission on Civil Rights to determine the effect of Public Law 93-181 of December 14, 1973 (5 U.S.C. § 6304) on the following fact situation. In 1973, Mrs. Phoebe N. Nelson, an employee of the Commission for 14 years, suffered from a heart condition which necessitated long absences from her work. On November 30, 1973, knowing that she would not return to work before the end of the calendar year on advice of her doctor, and knowing that she had 142 hours over and above the maximum permissible carry-over of 240 hours, Mrs. Nelson requested that 142 hours of annual leave be substituted for sick leave during December 1973. The remainder of the month was charged against her sick leave.

Upon learning of the passage of Public Law 93-181, Mrs. Nelson in January 1974 requested that the 142 hours of annual leave be converted to sick leave. In February 1974 her request was granted by the appropriate administrative officials of the Commission. When Mrs. Nelson retired on December 31, 1974, she received a lump sum payment for accumulated annual leave which did not however, include the above-mentioned 142 hours. The determination that Mrs. Nelson is not entitled to compensation for the 142 hours was made by Commission finance officers relying on General Accounting Office decisions made prior to the passage of the 1973 law. B-164346, June 10, 1968; B-142571, April 20, 1960. The decisions cited by the agency hold that sick leave may not be substituted for annual leave granted specifically at the employee's request.

5 U.S.C. § 6304(a) provides that annual leave accumulated in preceding years by an employee may not total more than 30 days at

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the beginning of the first full biweekly pay period in the following year. Subsection (d), as added by Public Law 93-181, effective December 14, 1973, reads in part as follows:

"(d) (1) Annual leave which is lost by operation of this section because of...

* * * * *

(c) Sickness of the employee when the annual leave was scheduled in advance

shall be restored to the employee."

The Civil Service Commission issued guidelines for the implementation of the new law in Federal Personnel Manual Letter 630-22, January 11, 1974. In item 5a (3) (c) on page 6 of that letter, the Commission states:

"(c) CSC Guidelines. Employees have always had the option of using annual leave in place of sick leave (or nonpay status) when the absence is related to illness and nothing in the new law prohibits this use. Employees now may have annual leave that was forfeited because of illness restored for later use provided

- that the annual leave was scheduled in advance;
- that the period of absence due to the sickness occurred at such a time late in the leave year or was of such duration that the annual leave could not be rescheduled for use before the end of the year to avoid forfeiture."

Also included in paragraph 3 of the Commission's letter was the following statement:

"Because the law was not signed until December 14, 1973, the following interim policy has been approved by the Commissioners for the 1973 year only:

"If an exigency of major significance or a lengthy period of absence due to sickness occurred during,

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immediately prior to the start of, or extended into the three biweekly pay periods prior to the end of the 1973 leave year, and thus prevented the scheduling, rescheduling, or use of annual leave to avoid forfeiture, the forfeited annual leave may be restored for later use."

When Mrs. Nelson scheduled the use of 142 hours of annual leave, she was suffering from a heart condition which she knew would require her absence from work for the remainder of the year. Although she was entitled to charge this time to sick leave, she specifically requested that the time be charged to annual leave. After such annual leave is granted and used, an employee may not reconvert the time to sick leave and be recredited with the amount of annual leave previously charged for purpose of lump sum payment upon separation for retirement. B-182804, June 25, 1975, 54 Comp. Gen.—. Since Mrs. Nelson actually used the 142 hours of annual leave, in a manner to which she was entitled they were not forfeited, and, therefore, they cannot be restored under Public Law 93-181.

R. F. FETTER

Deputy Comptroller General
of the United States