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**DECISION**



*Sharon A. McShane*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20549

**FILE:**

**A-107320**

**DATE: FEB 04 1977**

**MATTER OF:**

**Sharon A. McShane - Compensation for holiday  
not worked**

**DIGEST:**

Employee's claim for pay on holiday on which no work was performed is denied since employee was in nonpay status immediately preceding and immediately following such holiday. Also, although employee was prevented from working on day after holiday due to plant shutdown, she was given adequate advance notice to schedule annual leave so as to have sufficient leave to cover plant shutdown and neglected to do so.

This action is in response to a letter dated January 26, 1976, from Mrs. Sharon A. McShane, a civilian employee of the Naval Plant Representative Office (NAVPRO), Bethpage, New York, concerning her claim for pay for January 1, 1976, a holiday on which she performed no work.

Mrs. McShane was on authorized leave without pay the day before the holiday of January 1, 1976. She intended to return to work on January 2, 1976, but was prevented from working because her office was closed. In this regard, on May 23, 1975, NAVPRO issued a notice to all personnel containing annual leave planning information.

The notice listed the dates the office would be closed and provided, in pertinent parts:

"b. In addition to the above, Grumman Aerospace Corporation has scheduled a shutdown period from close of business on 23 December 1975 until Monday 5 January 1976. NAVPRO Bethpage operation over this period cannot be determined this far in advance. However, in the past it has been found necessary to close down during such periods due to heat and light considerations and lack of meaningful work when the contractor is closed down.

"c. In the event a NAVPRO shutdown is again found necessary during the above period, a total of six regular workdays would be involved, barring executive excusal on 26 December and 2 January. The past practice

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of allowing accrual of compensatory time for employees with insufficient annual leave is now prohibited by regulation. Therefore, all employees are asked to exercise prudent judgment in scheduling their use of annual leave to insure a sufficient leave balance to cover the possibility of a shutdown. In the event an employee does not have sufficient leave, consideration will be given to requests for leave without pay or advance of annual leave, consistent with the law and regulations."

Mrs. McShane was on leave from December 19, 1975, through January 2, 1976. She had sufficient annual leave to carry her through December 29 and was on leave without pay on December 30 and 31. Therefore, she was placed in a leave without pay status for January 2, 1976, the day after the New Years' holiday. Mrs. McShane returned to work on the next working day, January 5, 1976.

The Navy denied Mrs. McShane's claim for pay for the holiday on January 1, 1976, because the Civilian Manpower Management Instructions (CMMI) 550-S1, March 29, 1971, provide that "(a) an employee will not receive pay for a holiday occurring within a period of leave or absence without pay; i.e., when the absence in a nonpay status occurs both before and after the holiday."

The above-cited CMMI provision is consistent with our decisions which provide that in the absence of a statute providing specifically to the contrary, an employee who is in a nonpay status immediately preceding and immediately following a holiday, is not entitled to pay for the intervening holiday on which no work is performed. 9 Comp. Gen. 350 (1930). Mrs. McShane was given an opportunity early in the year to arrange her leave so that she could comply with the requirement of CMMI 550-S1 and receive pay for the holiday. However, she did not arrange to take her annual leave as suggested in the notice and she was in a nonpay status immediately preceding and immediately following the holiday. Therefore, she is not entitled to pay for January 1, 1976.

R.F. KELLER

Acting Comptroller General  
of the United States

*Leonard Ogden*  
*Dir. Sec.*

Indorsement

B-187520-O.M.

February 22, 1977

Director, Claims Division

Returned. By decision of today, B-187520, copy attached, we hold that Mrs. McShane is not entitled to pay for the holiday because she was in a nonpay status on both the day immediately preceding and the day immediately following the holiday on which no work was performed.

We note that the adjudicator stated that closing of an installation and requiring mandatory leave is illegal according to 45 Comp. Gen. 76 (1965). That decision merely states that an administrative officer cannot designate on which day a holiday will occur. However, we have consistently held that enforced annual leave situations, such as the administrative closing of an office for a period of time during which employees are required to take annual leave, come within the general rule that administrative offices may require any individual employee or class of employees to take annual leave at any time and for any period within the limitations of the Annual and Sick Leave Act of 1951, as amended, now codified in 5 U.S.C. §§ 6301-6311, as the needs of the service require. 40 Comp. Gen. 312 (1960); 54 id. 503, 505 (1974).

*Prokett*  
Acting Comptroller General  
of the United States

Attachment



UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548



CLAIMS DIVISION

SEP 24 1976

PA-Z-2621257-350

The Comptroller General:

Herewith is the file relative to the claim of Mrs. Sharon A. McShane for compensation of \$50.96 for January 1, 1976, a Federal holiday, believed due her as a civilian employee of the Department of the Navy, Naval Plant Representative Office, Grumman Aerospace Corporation, Bethpage, L.I., New York.

The record shows that on the weekdays prior to January 1, 1976, Mrs. McShane was in a leave without pay status. Since the Naval Plant Representative Office determined that Friday, January 1, 1976, would be a nonwork day and placed all employees on annual leave for that day, Mrs. McShane, having no accrued annual leave, was placed in a leave without pay status. On January 5, 1976, Mrs. McShane reported for work.

Consequently, the employee was on leave without pay on the days immediately preceding and following the January 1 holiday. The established rule is that an employee in a nonpay status immediately preceding and immediately following a holiday is not entitled to pay for the intervening holiday on which no service is performed. It is not clear, however, whether the rule applies to an instance as here, where the employee is precluded from working on the day following a holiday by virtue of administrative order.

Accordingly, the matter is submitted for your consideration and instructions. Congressman John W. Wydler is interested in this matter.

*Sharon A. McShane*  
Chief, Payment Claims Branch

Enclosure

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

*Susan Caplan  
Asst. Sec.*

B-187520

FEB 23 1977

The Honorable John W. Wyder  
House of Representatives

Dear Mr. Wyder:

Further reference is made to your letter of July 23, 1976, concerning the claim of Mrs. Sharon A. McShane of Rockville Centre, New York, for pay for January 1, 1976, a holiday on which she did not work.

By decision of today, copy enclosed, we have determined that Mrs. McShane's claim may not be allowed since she was in a leave without pay status immediately preceding and following the holiday. The correspondence with your letter is returned as requested by you.

R. F. KELLER

~~Acting~~ Comptroller General  
of the United States

Enclosures

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