

DECISION



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

FILE: B-184522

DATE: April 21, 1977

MATTER OF: -- Reconsideration of denial
of claim for backpay and recredit of leave

DIGEST: Employee requests reconsideration of decision denying in part her claim for backpay and restoration of leave while on involuntary leave. Placing employee on involuntary leave pending action upon agency-filed application for her disability retirement is not unjustified or unwarranted personnel action when based upon competent medical findings. Prior decision is sustained.

This action is in response to the request for reconsideration from Miss [redacted] of our decision B-184522, March 16, 1976, denying in part her claim for backpay and restoration of leave for the 18-month period she was placed on involuntary leave.

Briefly stated, the facts in this case indicate that Miss [redacted] was placed on involuntary leave while her employing agency filed an application for her disability retirement. The application was initially denied by the Civil Service Commission (CSC) and that determination was upheld in two subsequent appeals by the agency, after which the employee was returned to active duty. In our prior decision B-184522, *supra*, we held that when the disability retirement application is denied and the agency appeals, it is incumbent upon the agency to either restore the employee to active duty or initiate steps to separate the employee on the grounds of disability, and that the failure to do so constituted an unjustified or unwarranted personnel action under the Back Pay Act, 5 U.S.C. 5596 (Supp. V, 1975). We held that Miss [redacted] was entitled to backpay and restoration of leave for the 12-month period from the date the application was initially denied by the CSC to the date Miss [redacted] was restored to active duty.

With regard to the initial 6-month period while the agency-filed application was pending with the CSC we held that when administrative officers determine, upon the basis of competent medical findings, that an employee is incapacitated for the performance of his or her assigned duties and place that employee on involuntary leave, such action does not constitute an unjustified or unwarranted personnel action under the Back Pay Act. Therefore, we denied Miss [redacted]' claim for the initial 6-month period.

In requesting reconsideration Miss _____ argues that she was not found to be totally disabled, that she was not counseled or offered other positions within the agency (as alleged by the agency), and that there are alleged discrepancies with regard to dates and signatures on some of the official documents in the case. Miss _____ has submitted numerous documents from various supervisors and former patients at the Veterans Administration Hospital and from other employers attesting to her favorable work performance and her ability to work with others. Therefore, Miss _____ requests reconsideration of that part of our prior decision denying her backpay and restoration of leave for the initial 6-month period of involuntary leave.

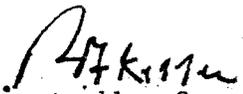
As we stated in our prior decision our Office has long held that an employee may be placed on involuntary leave while an agency-filed disability retirement application is pending before the CSC when administrative officers determine, upon the basis of competent medical findings, that an employee is incapacitated for the performance of his or her assigned duties. See 41 Comp. Gen. 774 (1962); B-181313, February 7, 1975; B-167317, September 5, 1969; B-156450, April 13, 1965; and cases cited therein. There has been no authoritative determination that the employee was not disabled at the time she was placed on involuntary leave and there is no indication that the medical findings were improper or not based on good judgment. In fact, the Civil Service Commission held only that she was not totally disabled and therefore not eligible for disability retirement since there are no provisions for disability retirement for a partial disability. Only under circumstances where the medical findings have been overturned or where there were no medical findings to support the administrative determination has our Office held that the involuntary leave in this situation an unjustified or unwarranted personnel action. 39 Comp. Gen. 154 (1959); 30 id. 390 (1951); B-170092, September 1, 1970; and B-163493, March 29, 1968.

Based upon the record before us and the evidence submitted by Miss _____, we find no basis upon which to allow backpay and restore leave for the 6-month period from the date she was placed on involuntary leave (September 7, 1972) to the date the CSC initially denied the application (March 6, 1973). As to the conflict over the facts with regard to whether Miss _____ was counseled or offered other positions and whether the documents in the record have been altered, our Office generally accepts the facts as reported by the agency, absent evidence furnished by the employee which clearly shows the facts submitted by the agency to be in error. See B-180638, August 30, 1974, and cases cited

B-184522

therein. We do not believe that the evidence submitted by Miss is sufficient to overcome the facts as reported by the agency.

Accordingly, our prior decision denying in part the claim for backpay and restoration of leave is sustained.


Deputy Comptroller General
of the United States