

DOCUMENT RESUME

03540 - [A2593719]

[Request by Employee to Reestablish Sick Leave Balance].
B-189531. September 14, 1977. 2 pp.

Decision re: Vicki Lynn Miller; by Robert F. Keller, Deputy
Comptroller General.

Issue Area: Personnel Management and Compensation (300).
Contact: Office of the General Counsel: Civilian Personnel.
Budget Function: General Government: Central Personnel
Management (805).

Authority: 5 U.S.C. 8101. 20 C.F.R. 10.310. F.P.M. Supplement
990-2, book 630, subch. S2-5b. 29 Comp. Gen. 76. 29 Comp.
Gen. 78.

David E. Bryant, Jr., Deputy Controller, General
Accounting Office, requested an opinion concerning an employee
who requested reestablishment of her sick leave balance by using
funds received from the insurance company to "buy back" the sick
leave she had used. With administrative approval, the employee
may refund the value of the advanced sick leave taken; the
normal rules applying to leave-without-pay status applied. (SW)

S. John
Clerk

DECISION



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

3719
03540

FILE: D-189531

DATE: September 14, 1977

MATTER OF: Vicki Lynn Miller - Reestablishing Sick Leave

DIGEST: GAO employee, who was injured en route to work, wishes to reestablish her sick leave balance by using funds received from insurance settlement to "buy back" sick leave used. There is no authority to "buy back" accrued sick leave in absence of approved claim for injury incurred while performing duties. However, employer may refund value of advanced sick leave under FPM Supplement, Book 630, subchapter S2-5, and be placed in leave-without-pay status for period covered by refund.

This action arose from a request for an advance opinion by Mr. David E. Bryant, Jr., Deputy Controller, Office of the Controller, General Accounting Office (GAO). The facts show that Ms. Vicki Lynn Miller, a secretary for the GAO, was injured in a car accident on the way to work on April 7, 1977. She sustained severe injuries, which necessitated her taking a total of 160 hours of sick leave. Some of this sick leave had been actually accrued while the remainder of it had been advanced.

The insurance company of the driver who had caused the accident settled with Ms. Miller, reimbursing her for her absences from work. Ms. Miller now wishes to reestablish her sick leave balance by using the funds received from the insurance company to "buy back" the sick leave which she used.

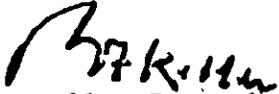
We are unaware of any authority for "buying back" sick leave except under the conditions prescribed in 20 C.F.R. 10.310 (1976). That section provides that an employee whose claim for compensation for an injury while performing assigned duties has been approved under 5 U.S.C. 8101 et seq. (1970) may "buy back" leave taken to avoid possible interruption of income. Since Ms. Miller has not been granted compensation under the above provisions, she may not "buy back" the sick leave to her credit at the time of her injury or accrued while on such sick leave.

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However, Federal Personnel Manual Supplement 990-2, Book §30, subchapter S2-5b, Liquidation of Advanced Leave, provides in pertinent part:

"* * * An employee may, with the consent of his agency, arrange to refund for advanced annual or sick leave in cash if such an arrangement is mutually agreeable and administratively feasible. (Pay rate applicable to refund is that rate which was in effect at the time the advanced leave was taken.) There is no authority under present regulations requiring an employee to refund the amount paid him for leave advanced prior to his separation * * *."

Therefore, with administrative approval, Ms. Miller may refund the value of the advanced sick leave she has taken. Should she refund the value of the advanced sick leave used, the effect will be to place her in leave-without-pay (LWOP) status for the period involved. 29 Comp. Gen. 76, 78 (1949). In such case the normal rules applying to LWOP, such as the reduction in leave accrual when 80 hours of LWOP are used, will apply.


Deputy Comptroller General
of the United States