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DECISION



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

FILE: B-189895

DATE: November 2, 1977

MATTER OF: Ralph R. Sturges - Change of Separation
Date

DIGEST: Employee committed suicide approximately 2 months after voluntary resignation. Although employee's initial memorandum presented agency with alternative of granting leave or accepting resignation, subsequent documents show employee intended resignation. Separation date may not be changed for purpose of granting sick leave, annual leave, and leave without pay until death because such date may not be changed in absence of violation of regulation or administrative error failing to effect intent of parties.

By a letter dated August 11, 1977, Mr. Frank G. Healey, Director of Personnel, Federal Home Loan Bank Board (FHLBB), requested our decision concerning the propriety of revising that agency's administrative records regarding the date on which Mr. Ralph R. Sturges separated from that agency.

The record indicates that Mr. Sturges was appointed on September 21, 1975, as a Savings and Loan Examiner, grade GS-5, in San Francisco, California. He was promoted to grade GS-7 on October 10, 1976. On February 3, 1977, he submitted to his immediate supervisor a memorandum captioned "Subject: Emergency Leave (or Resignation - take your choice)," which stated as follows:

"Until further notice consider me to be on emergency leave effective 8:00 A.M. today or to have resigned effective today.

"Enclosed is a check for \$400 to cover my travel advance in case I do not return to work.

"If this is to be my resignation, please have my final check sent to 112 Esplanade #255, Pacifica, Calif. 94044 if sent prior

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to February 15, 1977. If the final check is mailed after this date, send it to 2751 Harrison St., Long Beach, Calif. 90810.

"If I have not returned to work by February 15, 1977 - you will either have the remainder of my equipment or you will have to pick it up at 112 Esplanade #255.

"Some of my equipment is at Bay View Federal. Please take care of it."

By a memorandum dated February 4, 1977, the agency accepted Mr. Sturges' resignation effective at the close of business on February 3, 1977. At the time of his resignation, Mr. Sturges had accumulated 135 hours of sick leave and 36 hours of annual leave, having to his credit 3 years and 7 months of combined military and civilian service.

On April 5, 1977, Mr. Sturges was found dead in his apartment, the result of a suicide. At the time of his death, Mr. Sturges apparently had never married and was without issue. His mother, Mrs. Ruth Sturges, therefore, executed a Standard Form 1155 claiming the unpaid compensation due him as a civilian employee. In addition, by a letter dated April 28, 1977, Mrs. Sturges wrote to the agency requesting that the resignation action be rescinded and that Mr. Sturges be carried in a leave status until the date of his death. She contends that her son was in a "poor mental condition" prior to his resignation and that his February 3, 1977, memorandum should have been treated as a request for leave rather than as a resignation. It is her view, therefore, that it was administrative error for the agency to accept her son's resignation.

Noting that the requested change in Mr. Sturges' administrative records could result in establishing an eligibility for Federal Employees Group Life Insurance benefits estimated at \$25,000, the agency indicates that it is willing to effect a change in the employee's separation date. It is thus proposed to

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place Mr. Sturges on sick leave as of February 3, 1977, on annual leave upon the expiration of the sick leave, and on leave without pay until the date of death. The FHLBB, therefore, has sought our decision as to the legality of the proposed actions.

The general rule is that the date of separation by resignation is the date tendered by the employee, and such date may not be challenged once it becomes an accomplished fact. 32 Comp. Gen. 111 (1952). Thus, an employee may not be restored to a pay status for any period subsequent to the date of separation for the purpose of granting leave unless there was a bona fide administrative error or a violation of a valid regulation in effecting the separation. 32 Comp. Gen. 421 (1953); B-164232, May 28, 1968; and Albert R. Martin, B-183178, July 22, 1975. Thus, we have permitted corrective action when the circumstances of a particular case show that the resignation had not been accepted in the terms submitted or that the resignation as executed did not conform with the intention of the parties. 21 Comp. Gen. 517 (1941).

In the present case, Mr. Sturges' February 3, 1977, memorandum couched his request for "emergency" leave and the statement of resignation in the alternative. When, however, the agency accepted his resignation effective at the close of business on February 3, 1977, Mr. Sturges did not controvert or protest that action. Indeed, by a letter dated February 10, 1977, to his former supervisor, Mr. Sturges stated that the specific time at which the resignation was to be made effective was "totally unacceptable" and that his intent was to be considered on emergency leave or to have resigned effective 8 a.m. on February 3, 1977. Thus, although Mr. Sturges was presented with ample opportunity to have protested the agency's acceptance of his resignation, he chose to re-affirm that action. By a letter dated February 25, 1977, the agency advised Mr. Sturges that his resignation was made effective as of the close of business on February 2, 1977, in accordance with his intentions. It is clear, therefore, in the

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circumstances, that Mr. Sturges intended to resign from his position with the FHLBB, and that his resignation was effected in accordance with that intention.

Regarding the contention that Mr. Sturges suffered from a "poor mental condition" prior to his death, we note that there is no judicial determination in the record concerning his mental capacity. Although the agency states that Mr. Sturges demonstrated "irrational behavior" before his resignation, a judicial adjudication of incapacity is required in order to effect a limitation on the legal rights and powers of adults. See California Civil Code § 40 (1971). In the absence of such a determination, therefore, Mr. Sturges is presumed to have had the legal mental capacity to discharge his rights and obligations.

Since it thus appears that Mr. Sturges fully intended to resign his employment and that the resignation was in accordance with that intention, there is no authority for restoring him to a pay status for the purpose of granting accumulated sick or annual leave. Accordingly, the proposed action may not be taken.


Acting Comptroller General
of the United States