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DECISION



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

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FILE: B-192039

DATE: January 31, 1979

MATTER OF: Louis L. Carlson - [Retroactive substitution
of sick leave for annual leave]

DIGEST: Employee who became ill on May 12, 1977, and did not return to work until September 6, 1977, may retroactively substitute 64 hours of annual leave for equivalent amount of sick leave. Annual leave had been scheduled for use in August prior to employee's illness and employee made timely request for correction of leave records upon return after illness. Moreover, case does not violate prohibition of substituting annual leave for sick leave previously granted for sole purpose of avoiding year-end forfeiture.

AGC 00008

The Bureau of Land Management, Department of the Interior, requests a decision as to whether its denial of substitution of 64 hours of annual leave for sick leave to Mr. Louis L. Carlson, an employee of the Bureau, during the period May 12, 1977, through September 5, 1977, was proper under the facts and circumstances hereinafter stated. The Bureau recommends that the requested conversion of annual leave for sick leave be allowed and states that it will approve the substitution providing that our Office finds such substitution permissible. The entire period of illness had been charged to sick leave, but the employee, shortly after returning to work requested that 64 hours of annual leave be substituted for an equivalent amount of sick leave.

The record indicates that Mr. Carlson suffered a heart attack which would necessitate his absence for an unpredictable duration. The office at his duty station, Anchorage, Alaska, placed him in a sick leave status on May 12, 1977, and that status continued through the time that Mr. Carlson's annual vacation had been scheduled in August. Mr. Carlson had scheduled two weeks of annual leave for August 1977, before entering onto extended sick leave. During medical treatment in August, it was decided that a rest (vacation) would be advisable before returning to work. This rest period coincided with the originally planned vacation period. It is administratively reported that Mr. Carlson's state of mind during the period was such that he did not think about his leave status. He returned to duty on a one-half day basis beginning September 6, 1977, resuming work on a full time basis on September 12, 1977. It is reported that during the pay period immediately

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following Mr. Carlson's return his secretary made inquiry on his behalf regarding changing his leave status. After Mr. Carlson was told by the Bureau payroll office that retroactive substitution of annual leave for sick leave would not be allowed, he submitted a request dated October 7, 1977, in the form of an amendment to his August Time and Attendance Report. When the payroll office rejected this request, Mr. Carlson's supervisor wrote a request for reconsideration dated December 20, 1977. The request for reconsideration resulted in the matter being submitted for a decision by our Office. It would appear that the essential basis for Mr. Carlson's request is that the annual leave in question was previously scheduled for a period in August but that his emergency illness precluded the taking of a vacation until clearance from a doctor was obtained. Although Mr. Carlson did not immediately notify his permanent duty office in Anchorage in August when he received medical clearance in Seattle for his vacation, the record is clear that soon after returning from his emergency illness he initiated a series of requests for corrective action.

In 31 Comp. Gen. 524 (1952) we held that under the Annual and Sick Leave Act of 1951, and regulations issued pursuant thereto, annual leave may not be substituted for sick leave previously granted for the sole purpose of avoiding a forfeiture of annual leave at the end of a calendar year. This decision also recognized that absence due to illness may be charged to accrued annual leave if timely requested by the employee and approved by the administrative office concerned. Therefore, it is not relevant whether Mr. Carlson was in fact incapacitated or unable to return to work during the period in August when he scheduled and took his vacation. The requested charge to annual leave in the present case is in accord with the rule allowing accrued annual leave to be charged for absence due to illness. Also, the agency rightfully placed Mr. Carlson on sick leave when he was stricken by a heart attack in May. The agency, apparently assuming that Mr. Carlson had changed his vacation plans, made a decision to continue Mr. Carlson in a sick leave status through August even though he had scheduled two weeks of annual leave in August before the onset of his heart attack.

As indicated above, after he returned to work and learned of the agency's failure to charge his accrued annual leave for his vacation period, Mr. Carlson made a request to have his leave

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account corrected to conform with his earlier stated intention. We believe that under the circumstances those requests were timely. Also, we do not believe that Mr. Carlson ever made an election to change his previously scheduled annual leave to sick leave or was in any way at fault for his agency's presumption, however well intended and reasonable, that he would have preferred to remain on sick leave rather than use his previously scheduled annual leave. Moreover, we do not view the purpose of Mr. Carlson's request for retroactive substitution as an attempt to avoid a forfeiture of annual leave, which as indicated above is an impermissible purpose upon which to grant retroactive substitution, but to correct an erroneous charge to his accrued sick leave, and thereby accomplish the previously scheduled use of accrued annual leave. Accordingly, this Office will not object to the substitution of 64 hours of annual leave for an equivalent amount of sick leave charged during the 1977 leave year. See B-142571, April 20, 1960; B-176093, July 10, 1972; and B-178583, June 14, 1973.

Handwritten signature in cursive script, appearing to read "R. K. ...".
Deputy Comptroller General
of the United States