

12773 PHM-1
Mr. Kirk Patrick



DECISION

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

FILE: B-195688 *✓ addresses per name* DATE: February 6, 1980

MATTER OF: Donald L. Ogburn - *and* [Excused Absence A Snow
Emergency] - Delayed Return to Duty

DIGEST: Employee of FAA was unable to return to duty after hunting trip because of snow emergency which affected both hunting site and duty station. Employee's office remained open and Federal Personnel Manual guidelines authorize agency to grant excused absence based on individual circumstances. Peggy Ann Mistler, B-193389, November 29, 1978, which barred excused absence caused by snow emergency at vacation site only, does not preclude grant of excused absence based on individual facts where emergency affected duty station also.

The Professional Air Traffic Controllers Organization (PATCO) requests our decision whether administrative leave (paid excused absence without charge to annual or sick leave) may be granted to Donald L. Ogburn, an employee who was delayed in returning to work because emergency conditions caused by a snowstorm affected both the employee's vacation site and his place of employment. Robert J. Kaps, Assistant Chief, Operations, Procedures and Airspace Branch, Federal Aviation Administration (FAA), Central Region, posed this question and asked that PATCO present it to the Comptroller General in connection with four snow leave grievances (ACE-79-6, 7, 17, and 18-ZKC-3) of certain FAA employees.

PATCO's attorney has presented the case of Donald L. Ogburn (ACE-79-6) as representative of all four grievances for the purpose of resolving the issue. Mr. Ogburn, an employee of FAA's Air Route Traffic Control Center, Olathe, Kansas, took annual leave on January 11, 1979, and went to Beloit, Kansas, on a hunting trip. The following 2 days, January 12-13, were his regular days off. He planned to return home on January 13; however snow began falling the afternoon of January 12, and when it stopped on the 13th, the State of Kansas was left paralyzed. The Kansas Highway Patrol advised that all roads in North Central Kansas were closed. As a result of the snow emergency, he did not attempt to drive home to Olathe until January 14, and did not arrive there until 9 p.m. that evening, too late for his

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*have to claim leave
Administration
Emergency leave
any town*

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Precipitation (weather)

B-195688

scheduled tour of duty in Olathe on the 2 p.m. to 10 p.m. shift. He reported for work at his scheduled time on January 15.

Mr. Ogburn filed a grievance requesting 8 hours excused absence (administrative leave) for the shift he missed on January 14, claiming PATCO's collective bargaining agreement with FAA authorized the leave. Mr. Ralph E. Brockman, Chief of FAA's Kansas City Air Route Traffic Control Center, by letter of March 9, 1979, denied the grievance. Mr. Brockman acknowledged Mr. Ogburn's difficult return trip from Beloit to Olathe. However, he concluded that leave could not be granted because Mr. Ogburn's inability to report for work on January 14 was due to delay in driving from Beloit to Olathe. That reason was entirely personal to Mr. Ogburn, since it was his decision to travel on his day off to a location outside the normal commuting area of his workplace, and therefore he, not the Government, bore the risk of an emergency preventing his return to duty as scheduled. Mr. Brockman said that granting the leave would violate applicable law and regulations, as held in Federal Labor Relations Council Decision No. 78A-68, December 22, 1978, which was based upon our decision in Peggy Ann Mistler, B-193389, November 29, 1978.

In the Mistler decision, we held that isolation at the employee's vacation site by a snowstorm was an emergency personal to the employee, the employing agency having no control over selecting the site, which can be as far distant, remote, and susceptible to emergency situations as the employee elects. Since the trip was personal, we concluded that administrative leave could not lawfully be granted for absence caused by the emergency at the vacation site.

PATCO contends that the Ogburn case is distinguishable from Mistler because the snowstorm in the instant case adversely affected both the vacation site and the duty station which are closely situated within the same state. Therefore, in order to enable the parties to resolve the four grievances, PATCO requests our opinion on whether the Mistler decision applies to bar Ogburn from being granted administrative leave because he was unable to return to work from his hunting trip.

In analyzing the issue presented, we refer to the "Guidelines for Dismissal and Leave Treatment of Federal Employees During

B-195688

Emergency Situations," (November 6, 1974), contained in Appendix A to Book 610, Federal Personnel Manual Supplement 990-2. The guidelines provide (Section A-4) that, in emergency conditions under which Federal offices remain open, employees may be charged annual leave or be excused without charge to leave or loss of pay depending on the individual circumstances of the absence. The guidelines further provide the following criterion for agencies to use (p. 610-A-3):

"* * * The basic criterion should be whether the employee made a reasonable effort to get to work. If it is determined that a reasonable effort was made, it would be appropriate to excuse the absence without charge to leave and without loss of pay. Determining factors in this decision include: Distance between the employee's residence and place of work; mode of transportation normally used; efforts by the employee to get to work; and success other employees similarly situated had in being able to report to work." (Emphasis added.)

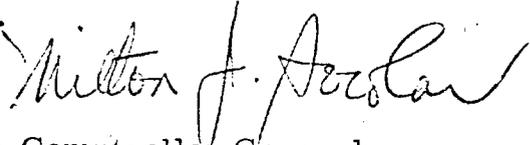
Thus, a Federal agency has broad discretion to grant administrative leave with pay during snow emergencies when its offices remain open. The guidelines make it clear that the decision to grant such leave is to be based on the individual circumstances pertaining to each employee and that the basic test is whether the employee made a "reasonable effort" to report for duty.

In the Mistler decision the emergency conditions at the employee's vacation site did not exist at the employee's duty station. Hence, Mistler is not applicable to a case where emergency conditions exist in the vicinity of the duty station. In the latter case the agency must make a determination based on the efforts of the individual employee to reach his office, whereas in the Mistler case we held that agencies have no authority to grant administrative leave to an employee for an absence caused by an emergency occurring only at a vacation location.

In thus agreeing with PATCO that our prior decisions do not bar the FAA from excusing Ogburn's absence, we do not pass judgment on whether Ogburn or the other three grievants

B-195688

should be granted excused absences with pay. We believe that the individual determinations in the four pending cases should be made by the FAA and PATCO on the basis of the particular facts involved in each instance and in accordance with their collective bargaining agreement.

A handwritten signature in cursive script, appearing to read "Milton J. Ardalan".

For The Comptroller General
of the United States