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DECISION



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

FILE: B-201773

DATE: March 4, 1981

MATTER OF: Patricia J. Brown - [Claims for Payment
for Unused Sick Leave and Tort Damages]

- DIGEST:**
1. Unused sick leave may be credited towards service upon retirement or it may be recredited to employee if reemployed within 3 years from separation. However, there are no provisions which allow for a lump-sum payment for unused sick leave upon resignation.
 2. Claim for damages sounding in tort arising out of employment with the Department of Agriculture falls within purview of Federal Tort Claims Act, 28 U.S.C. §§ 2671 et seq. (1976). Head of Federal agency concerned has exclusive jurisdiction to settle claims arising under this Act; therefore, claim is not for settlement by the General Accounting Office.

This is in response to a request for reconsideration of the denial by our Claims Group of a claim by Patricia J. Brown for payment of unused sick leave at the time of her resignation from the United States Department of Agriculture, Forest Service, in June 1975. Also, she appeals the Claims Group's denial of her claim for \$20,000 for alleged pecuniary losses and emotional strain.

Ms. Brown contends that she was ill for several months prior to resigning from the Forest Service as well as for many months after she left. She was unable to find employment after she left the Forest Service and had to spend in excess of \$1,400 for individual coverage health insurance premiums. Up until the time she became ill, Ms. Brown states she was happy working for the Forest Service. Ms. Brown requests payment for the 164 hours of unused sick leave which she had at the time she resigned and \$20,000 for pecuniary losses and emotional strain.

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Although the record is not clear, presumably she feels she was mistreated in that her supervisors did not provide support and did not retain her in the employment of the Forest Service once she became ill. In addition, Ms. Brown's letter in response to our Claims Group's denial of her claim cites Forest Service Manual section 6175.14a which provides for adjustment of the working environment to fit the capacity of the employee in cases of physical or emotional incapacitation. Ms. Brown states this was not done nor did the Forest Service attempt to obtain a professional medical opinion of her physical limitations as required by that section. She concludes that this establishes Forest Service liability.

Under the provisions of 5 U.S.C. § 5551(a) (1976), an employee who is separated from Federal service is entitled to a lump-sum payment for all accumulated and accrued annual leave, but not for sick leave. Sick leave with pay is available for the employee to use while employed if the employee is too ill to come to work (5 U.S.C. § 6307), or, pursuant to 5 U.S.C. § 8339(m) (1976), unused sick leave to an employee's credit at the time of retirement may be added to the employee's total Federal service for the purpose of computing an annuity. Also, an employee who is separated from Federal service is entitled to recredit of unused sick leave if reemployed within 3 years from the date of separation. See 5 C.F.R. § 630.502(b)(1) (1980). However, there is no statutory authority for lump-sum payments for unused sick leave at the time of an employee's separation. See B-190152, November 30, 1977. Therefore, we sustain the action of our Claims Group denying Ms. Brown's claim for payment for her unused sick leave at the time she resigned.

Ms. Brown's claim for \$20,000 for pecuniary losses and emotional strain sounds in tort. In light of the fact that Ms. Brown cites lack of support from her supervisors as well as a Forest Service Manual section, referred to above, providing for possible adjustments to the physically incapacitated employee's working environment, which she states the Forest Service did not adhere to, we presume her claim is based on a theory of negligence.

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Torts allegedly committed by employees of the Federal service are considered under the Federal Tort Claims Act, 28 U.S.C. §§ 2671 et seq. (1976). Under section 2672 the head of the Federal agency concerned is responsible for settling:

"* * * any claim for money damages against the United States for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the agency while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred."

Once this administrative remedy is exhausted the appropriate United States District Court then has jurisdiction of civil actions on such claims. 28 U.S.C. § 1346(b) (1976).

Not all tort claims are cognizable under the Federal Tort Claims Act. The doctrine of sovereign immunity, which precludes bringing an action against the Government, still applies to:

"Any claim based upon an act or omission by an employee of the Government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused." 28 U.S.C. § 2680.

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Ms. Brown's tort claim, if not barred by the statute of limitations, would be properly brought before the Department of Agriculture. As our Office has no authority to settle that claim, we sustain the Claims Group's action in that regard.

Milton J. Fowler

Acting Comptroller General
of the United States