

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548****FILE:** B-207444**DATE:** October 20, 1982**MATTER OF:** Michael J. DeLeo

DIGEST: It was within the discretion of the appropriate officials of the Defense Investigative Service to decide that one of its employees who requested sick leave was entitled to it, based on evidence that the employee was absent due to a severe and physically incapacitating emotional injury following the death of his wife.

This is in response to a request from the Accounting and Finance Officer, 76th Airlift Division, Bolling Air Force Base, for an advance decision concerning the propriety of approving sick leave for an employee of the Defense Investigative Service, Mr. Michael J. DeLeo. For the reasons set forth below, we conclude that Mr. DeLeo's request for sick leave was properly approved by Defense Investigative Service officials, and that the period in question should be charged as sick leave.

The record indicates that Mr. DeLeo was absent from work from April 16 until May 8, 1981. Mr. DeLeo requested that his absence be charged to sick leave rather than annual leave because his absence was due to extreme mental anguish which he suffered after the protracted illness and death of his wife. The request for sick leave was reviewed and approved by the employee's immediate supervisor, his second-level supervisor, and the agency's Regional Director. Upon his return to work Mr. DeLeo submitted a certificate signed by a doctor of osteopathy to support his sick leave request. This certificate states:

"This note is to certify that the above named [Michael DeLeo] was absent from work due to the emotional and physical traumatic stress caused by the prolonged illness and subsequent death of his wife, Vivian DeLeo.

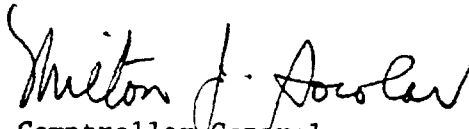
"Michael was absent from work during the period of April 16, 1981 until May 8, 1981. He will be returning to work May 11, 1981."

Although the Defense Investigative Service is a separate agency of the Department of Defense and is independent of the Air Force, the Accounting and Finance Officer at Bolling Air Force Base provides payroll support (including leave record maintenance) for

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who was fatigued from lack of sleep because he had been up during the night with his sick wife. In the Turner case we sought the views of the Civil Service Commission (now Office of Personnel Management). They advised us that while the employee in that case may have been incapacitated for work due to fatigue, to charge the time to sick leave the incapacitation must have been for one of the reasons set out in the regulations, and that the fatigue in that case did not meet the regulatory requirements. Instead, they reasoned that the generous amounts of annual leave granted to Federal employees were authorized by law with the understanding that they were meant for more than vacations; i.e., annual leave was also to be used for a variety of personal and emergency reasons. Such reasons can include transporting a member of the family to a doctor or hospital for emergency treatment; staying home with a member of the family who is ill, but not with a contagious disease; being tired or fatigued because of loss of sleep due to any one of a number of causes, ranging from care of an ill member of the family to worry over family problems. See Matter of Stuart, B-195042, August 6, 1979.

The present case differs from the Turner case in that Mr. DeLeo did not claim to be tired or fatigued because of loss of sleep due to worry over his wife's death. He claimed to be in "extreme mental anguish," and his doctor attested to the fact that his emotional distress was manifested by "physical traumatic stress" which would appear to meet the regulatory requirement that the incapacity is due to the employee's sickness or injury. The appropriate Investigative Service officials concluded that Mr. DeLeo's own certification plus the certification of a licensed medical practitioner were administratively acceptable to establish a valid claim for sick leave. See 4 Comp. Gen. 426 (1924), and Matter of Use of Sick Leave, B-201099, December 22, 1981. In light of the circumstances which attended Mr. DeLeo's absence, we do not believe that the agency abused its discretion in making this determination. Accordingly, Mr. DeLeo's absence for the period in question should be charged to sick leave.


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selected employees of the Investigative Service, including Mr. DeLeo. When the Accounting and Finance Officer was advised of the circumstances surrounding Mr. DeLeo's absence, he questioned charging the absence to sick leave, contending that the Investigative Service had incorrectly evaluated the nature of Mr. DeLeo's absence and had approved sick leave improperly. As a result, the matter was reviewed by the Director for Personnel and Security of the Investigative Service who found no basis for questioning placing Mr. DeLeo on sick leave. However, the Finance Officer still considered the matter doubtful, particularly in view of our decision Matter of Turner, B-181686, September 2, 1975 (55 Comp. Gen. 183). Therefore, the matter was submitted to us for decision.

Pursuant to its statutory authority under 5 U.S.C. § 6311, the Office of Personnel Management has promulgated regulations governing the administration of sick leave. These regulations, at 5 C.F.R. § 630.401, state, in part:

"An agency shall grant sick leave to an employee when the employee:

* * * * *

"(b) Is incapacitated for the performance of duties by sickness, injury, or pregnancy and confinement * * *."

The determination of whether an employee is incapacitated, in fact, for any one of the named reasons generally is within the agency's discretion as defined at 5 C.F.R. § 630.403:

"An agency may grant sick leave only when supported by evidence administratively acceptable. Regardless of the duration of the absence, an agency may consider an employee's certification as to the reason for his absence as evidence administratively acceptable. However, for an absence in excess of 3 workdays, or for a lesser period when determined necessary by an agency, the agency may also require a medical certificate, or other administratively acceptable evidence as to the reason for the absence.

The Comptroller General decision cited by the Finance Officer, Matter of Turner, 55 Comp. Gen. 183, concerned the question of whether it was appropriate to authorize sick leave for an employee