

# DECISION



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

**FILE:** B-213789

**DATE:** May 18, 1984

**MATTER OF:** Jack L. Hamilton -- Restoration of Sick Leave

## **DIGEST:**

Employee was placed on involuntary sick leave after an agency physician found there were limiting conditions to the employee's continued employment in his assigned position. Claim for backpay and recredit of sick leave is denied since agency may place an employee on involuntary sick leave when medical evidence indicates that he is incapacitated for performance of his assigned duties.

Mr. Jack L. Hamilton, a former Veterans Administration (VA) employee, appeals our Claims Group's denial of his claim for backpay and recredit of 2 days' sick leave used while he was placed on involuntary leave. For the following reasons, we affirm our Claims Group's denial of Mr. Hamilton's claim.

## FACTS

During his career with the VA, Mr. Hamilton sustained a succession of on-the-job injuries. In 1982, as a result of these injuries, Mr. Hamilton was suffering from problems with his back. At that time, he was working as a painter, WG-9, at the VA Medical Center in Salem, Virginia. Following his most recent injury, which occurred on July 26, 1982, he was reassigned to temporary light-duty work in the Medical Center's laundry plant. On December 8, 1982, a fitness-for-duty examination was performed on Mr. Hamilton by an agency physician because of increased absenteeism from injuries and illness. On January 4, 1983, the VA personnel office received the results of this examination which showed limiting conditions to Mr. Hamilton's continued employment in his assigned duties as a painter. According to the administrative report submitted to this Office by the VA, the agency filed an application for disability retirement for Mr. Hamilton on January 5, 1983. The next day, two officials from the personnel office met with Mr. Hamilton to discuss the results of the examination. The agency contends that because of Mr. Hamilton's inability to perform the duties of a painter, his pending application

for disability retirement dated January 5, 1983, and the lack of a temporary light-duty assignment, he was placed on involuntary sick leave for the next 2 work days. On January 11, 1983, the agency was able to reassign Mr. Hamilton to a temporary light-duty assignment in the Medical Center's pharmacy. On May 20, 1983, Mr. Hamilton retired on disability.

Mr. Hamilton contends that at the time he was placed on involuntary sick leave, the agency had not filed an application for disability retirement. Further, he contends that there were light-duty assignments available on the 2 days he was forced to use sick leave.

#### DISCUSSION

Our Claims Group denied Mr. Hamilton's claim for backpay and recredit of 2 days' sick leave he was forced to use. The denial was based on decisions of this Office which hold that an agency may place an employee on involuntary leave while an agency filed application for disability retirement is pending when administrative officers determine, on the basis of competent medical evidence, that an employee is incapacitated for the performance of his assigned duties. See \_\_\_\_\_, B-184522, April 21, 1977.

Mr. Hamilton appeals the denial of his claim by contending that the VA had not filed an application for disability retirement before he was placed on involuntary sick leave. Further, he contends that there were light-duty assignments available on the days he was placed on leave. The agency report, on the other hand, states that an application for disability retirement was filed by the agency on January 5, 1983, 2 days before Mr. Hamilton was placed on involuntary sick leave. The record also discloses that the agency made attempts to reassign Mr. Hamilton to light-duty positions. From August 3, 1982, until January 6, 1983, he was reassigned to a light-duty assignment in the Medical Center's laundry plant. According to the agency report, temporary light-duty work diminished in the laundry after the Christmas holidays to the point where Mr. Hamilton's services were no longer needed. After being placed on involuntary sick leave for 2 days, another light-duty assignment was found for him in the pharmacy. Apparently, the agency was able to accommodate him in that position or other light-duty assignments until he retired on disability on May 20, 1983.

We decide cases involving claims against the Government on the basis of the written record. The claimant has the burden of proof of establishing the liability of the United States and the claimant's right to payment. 4 C.F.R. § 31.7 (1984). Therefore, if the written record before us presents a material dispute of fact that cannot be resolved without an adversary hearing, we are required to deny the claim because the claimant has failed to establish his claim.

Furthermore, regardless of whether the agency filed an application for disability retirement before placing Mr. Hamilton on involuntary sick leave and whether temporary light-duty assignments were available, the agency acted within its discretion to place Mr. Hamilton on involuntary sick leave.

An employee may be placed on annual or sick leave or in a nonduty nonpay status when he is not "ready, willing, and able to work." Federal Personnel Manual, Ch. 751, § 1-3c (Inst. 237, December 21, 1976). In addition, according to the VA Manual, MP-5, Part 1, Ch. 630, § 11h (August 22, 1979), an employee who is unable to perform his duties because of illness may be placed on involuntary sick leave. Finally, the general rule applied by this Office is that an employee may be placed on leave without his consent when administrative officers determine, upon the basis of competent medical findings, that the employee is incapacitated for the performance of his assigned duties. Laudis B. Patterson, B-206544, July 7, 1982; William O. Garrison, B-193559, April 27, 1979. Under such circumstances, the involuntary leave does not constitute an unjustified or unwarranted removal or suspension without pay within the meaning of the backpay provisions of the applicable statutes. Laudis B. Patterson, B-193559, supra; 41 Comp. Gen. 774 (1962).

The agency placed Mr. Hamilton on involuntary sick leave based on the agency physician's finding that there were limiting conditions to his ability to perform his assigned duties as a painter. No contrary medical evidence was presented during the period of time Mr. Hamilton was on involuntary sick leave which shows that he could have performed his duties during that time. There is no indication that the medical advice in the first instance was improper or not based on good judgment. On the contrary, the evidence indicates that the medical advice was

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proper since Mr. Hamilton retired on disability a few months later.

For the foregoing reasons, we affirm the denial of Mr. Hamilton's claim by our Claims Group.

*for*   
Comptroller General  
of the United States