



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Government Printing Office - Workers'  
Compensation - Buy Back of Leave - Use of Annual  
or Sick Leave to Liquidate Debt

File: B-229168

Date: September 7, 1988

### DIGEST

Under the provisions of the Federal Employees' Compensation Act, an employee who uses annual or sick leave during absences from work in connection with work-related injuries or illnesses may "buy back" or repurchase such leave and accept workers' compensation for the period of such absences under the Act. We hold that an employee may not use accumulated annual or sick leave in order to liquidate an indebtedness owed the agency since annual and sick leave may not be converted into a monetary equivalent in these circumstances. See Donald R. Manning v. United States, 7 Cl. Ct. 128, 133 (1984).

### DECISION

The issue in this decision is whether an employee in a leave repurchase situation under the Federal Employees' Compensation Act may convert accumulated annual or sick leave into a cash equivalent in order to liquidate an indebtedness owed to the government. We hold that accumulated annual or sick leave may not be converted for the following reasons.

### BACKGROUND

This decision is in response to a request by Mr. Grant G. Moy, Jr., General Counsel, United States Government Printing Office (GPO), and George B. Driesen, Esquire, who represents the members of the Columbia Typographical Union, Local No. 101 (union). The case is being considered under our procedures for decisions concerning the legality of appropriated fund expenditures which are of mutual concern to agencies and labor organizations, 4 C.F.R. part 22 (1987).

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In the situation where an employee suffers an illness or injury, the Office of Workers' Compensation Programs (OWCP), Department of Labor, under the provisions of the Federal Employees' Compensation Act, 5 U.S.C. §§ 8101-8193 (1982), determines whether an employee's illness or injury was work related and whether the employee is entitled to compensation and medical benefits under the Act. Under certain circumstances, an employee who suffers a traumatic job-related injury may be entitled to the continuation of his or her pay for a period not to exceed 45 days. 20 C.F.R. § 10.201 (1987). For periods beyond 45 days or instead of a continuation of pay, the employee may elect to use accumulated annual or sick leave or such leave as may be advanced by the agency. 20 C.F.R. § 10.202 (1987).

However, an employee may not receive compensation under the Federal Employees' Compensation Act for any period in which he is carried in a pay status. 5 U.S.C. § 8116 (1982). Thus, once OWCP determines that an employee's illness or injury was work related, the employee may elect to "buy back" annual and/or sick leave taken in connection with a work-related illness or injury under the provisions of 20 C.F.R. § 10.310 (1987). The employee is then placed in a leave-without-pay (LWOP) status in order to receive disability compensation benefits.

The union and GPO propose to permit the employees to repurchase the full amount of the leave used during the period of disability by allowing them to "sell back" to the agency an appropriate number of hours of current, accumulated annual or sick leave. For example, assume that an employee wishes to "buy back" 100 hours of leave which has a value of \$1,500.<sup>1/</sup> If the OWCP compensation totals \$1,125, the employee must repay the difference, \$375, to the agency. The employee is then recredited with all of the annual or sick leave used during this period.

The union and GPO propose that the employee be permitted to "sell" hours of annual or sick leave which equals \$375 instead of making a cash payment to the agency. The OWCP has no objection to this proposal.

The GPO contends that, with the exception of the required forfeiture of annual leave when an employee exceeds the "use or lose" limitations contained in 5 U.S.C. § 6304

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<sup>1/</sup> This scenario is drawn from an example contained in a letter from OWCP to GPO dated April 29, 1987. The OWCP used the scenario to clarify a different principle concerning leave repurchase.

(1982), an employee is not required to forfeit earned annual leave. Therefore, the agency suggests that the employee has almost an absolute entitlement to either the use of this leave (assuming the requisite supervisory approval) or its monetary equivalent (such as when the employee retires or leaves the government). Accordingly, GPO feels that the employee's annual leave balance could be treated the same as an entitlement to pay which, in turn, could be used to offset an indebtedness to the government.

The union also supports the concept of allowing an employee to convert accrued annual or sick leave to pay the indebtedness owed the government in lieu of paying cash in exercising leave repurchase rights pursuant to 20 C.F.R. § 10.310. The union first argues that since we have previously declined jurisdiction in leave repurchase situations,<sup>2/</sup> we should merely affirm the opinion of the OWCP and allow GPO to permit the exchange of accrued annual or sick leave under these circumstances. In the alternative, the union argues that since the OWCP regulations permit the agency to compute the amount due in leave repurchase situations, it is the agency and not our Office that should decide this question.

On the merits of the question, the union states that it is not aware of any statute or regulation proscribing the "buy back" of leave with accrued annual or sick leave. The union argues that decisions issued by the United States Claims Court and our Office have approved the substitution of one type of leave for another in a leave repurchase situation.<sup>3/</sup> In summary, the union states that the laws governing leave for federal employees exist for the benefit of those employees and allowing employees recovering from job-related disabilities to exchange one type of leave for another merely takes from one pocket to put in the other.

#### OPINION

The law and regulations governing an employee's election to use annual or sick leave or to repurchase that leave do not specify how the employee shall make that repayment. 5 U.S.C. §§ 8116, 8118 (1982) and 20 C.F.R. § 10.310 (1987). Thus, both the union and GPO suggest that an employee's hours of accumulated annual or sick leave may be converted into a monetary equivalent and thus be used to pay

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<sup>2/</sup> B-194625, Jan. 9, 1987.

<sup>3/</sup> Robert B. Lindsey v. United States, 214 Ct. Cl. 574 (1977); Larry L. Van Eerden, 63 Comp. Gen. 291 (1984).

off the indebtedness owed the government which arose during the employee's period of disability. We disagree.

With regard to the jurisdictional arguments posed by the union, we note that in a letter to OWCP, we declined to issue regulations or guidance for computing the amount to be repaid in a leave repurchase situation. B-194625, Jan. 9, 1987. In that letter, we deferred to OWCP on whether the repurchase of previously used leave should be based on the gross value of the leave. That is not the question posed in this case; the question raised here is, once the amount of indebtedness to the employing agency is established, whether the employee may use accumulated annual or sick leave to satisfy the indebtedness. We have traditionally assumed jurisdiction in matters involving the use of annual and sick leave. See 31 Comp. Gen 215 (1951) and the decisions cited therein.

The union also argues that this is a matter of computing the indebtedness which, under OWCP regulations, is within the jurisdiction of the employing agency. 20 C.F.R. § 10.310 (1987). We again disagree since the issue posed in this decision is not how much the employee owes in a leave "buy back" situation but how the employee may liquidate this indebtedness. As noted above, this question involves the permissible use of annual and sick leave.

Turning to the arguments of the union and GPO on the merits of the issue, we find that there are only two situations in which an employee may convert accrued annual or sick leave into their monetary equivalent. The statutes allow an employee to obtain a lump-sum payment for accrued annual leave or credit for sick leave (1) upon separation or retirement from federal service or (2) upon entry into a position excepted from the application of the annual leave provisions contained in 5 U.S.C. §§ 5551-52, 8339(m) (1982). See Donald R. Manning v. United States, 7 Cl. Ct. 128, 133 (1984).

The proposal suggested by GPO and the union does not come within either of these two exceptions. As the Claims Court stated in Manning, supra, there is no statutory authority to convert accrued leave into its monetary equivalent, other than the two exceptions cited above, citing Ainsworth v. United States,<sup>4/</sup> and Burich v. United States.<sup>5/</sup> In the

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<sup>4/</sup> 185 Ct. Cl. 110, 122 (1968).

<sup>5/</sup> 177 Ct. Cl. 139, 150 (1966). See also Donald A. Adams v. United States, 3 Cl. Ct. 696 (1983).

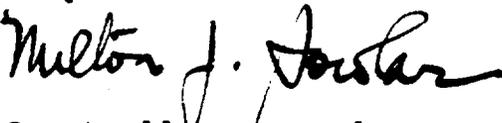
absence of such authority, we conclude that an employee may not use accrued or accumulated annual or sick leave to liquidate an indebtedness to the government under the Federal Employees' Compensation Act. Similarly, we believe there is no authority to use leave in repayment of any other indebtedness which might arise in the course of employment, such as repayment of a travel advance.

The Claims Court and Comptroller General decisions cited and set forth by the union in support of its proposal do not authorize the conversion of accrued annual or sick leave into their monetary equivalent, and, therefore, are not applicable here.

In Lindsey, supra, the Court of Claims permitted an employee to retroactively substitute sick leave for annual leave and to allow lump-sum payment for his accumulated annual leave upon retirement as provided for by 5 U.S.C. § 5551 (1982). There is no suggestion in that case that the employee would be permitted to treat the leave as a cash equivalent in order to repay an indebtedness owed the government.

Similarly, in Larry L. Van Eerden, 63 Comp. Gen. 291 (1984), this Office held that an employee may retroactively substitute sick leave for LWOP in a workers' compensation situation. Again, as in Lindsey, supra, leave was not converted into a monetary equivalent in Van Eerden, supra, but rather one type of leave was substituted for another. See also Interstate Commerce Commission, 57 Comp. Gen. 535 (1978).

Accordingly, we hold that an employee may not convert accumulated annual or sick leave in order to liquidate an indebtedness owed the government by the employee in a leave repurchase situation under 20 C.F.R. § 10.310 (1987).

*for*   
Comptroller General  
of the United States