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The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** VA Employees - Military Duty to Assist in Fighting Forest Fires

**File:** B-231760

**Date:** February 17, 1989

## DIGEST

Federal employees who were members of the California National Guard were called to perform full time emergency duty to help in the effort to fight forest fires. The request for military leave under 5 U.S.C. § 6323(b) (1982) is denied since they were not called to provide military aid "to enforce the law."

## DECISION

This decision is in response to a request from the Administrator of the Veterans Administration (VA). The question asked is whether VA employees who were called to perform military duty as members of the California Army National Guard during the 1987 forest fire emergency in that state are entitled to military leave under 5 U.S.C. § 6323(b) (1982). We conclude that they are not entitled to such leave, for the following reasons.

## BACKGROUND

In September 1987, VA employees in California who were members of the California Army National Guard received orders to perform temporary military duty for firefighting purposes, but not as firefighters. Their role was to provide logistical support to the various fire crews, in that they were to provide transportation, conduct feeding operations, and where required, provide life support for those crews.

At the outset, the VA employees called to duty were charged annual leave during their absence from their civilian positions. They now seek to have that absence charged to military leave under 5 U.S.C. § 6323(b) (1982). The State Judge Advocate, Office of the Adjutant General, State of California, has supported their request and expressed the

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opinion that the emergency duty to support the State Forest Service to fight forest fires is within the purview of 5 U.S.C. § 6323(b). The VA, in turn, has expressed uncertainty whether fighting forest fires would qualify as "military aid to enforce the law," as that term is used in 5 U.S.C. § 6323(b).

#### OPINION

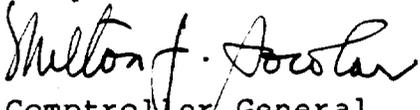
Military leave for civilian employees of the federal government is authorized by 5 U.S.C. § 6323 (1982). Subsection 6323(b) provides in part that a federal employee who is a member of a state National Guard and who performs full time military service "for the purpose of providing military aid to enforce the law," is entitled to military leave while performing such service, but not to exceed 22 workdays a year.

In determining whether the duties performed by a federal employee while on active duty as a member of a state National Guard qualify as "military aid to enforce the law," we have primarily relied on the wording of the military orders issued and the nature of the duties being performed. In 49 Comp. Gen. 233 (1969), we considered whether National Guard duty to prevent looting and other criminal activities in cases of disasters such as floods, earthquakes and hurricanes constituted military aid to enforce the law. We concluded that it did, stating that the "maintenance of law and order is a prime function of the assigned military duties." 49 Comp. Gen. at 240.

In 50 Comp. Gen. 154 (1970), we considered the applicability of section 6323(b) in connection with the mobilization of the Reserve and the National Guard incident to a work stoppage by Postal Service employees. We concluded in that case that the National Guard's protection of the mail and assuring its unhindered distribution qualified as military aid to enforce the law. In so concluding, we pointed out that law enforcement was not limited to enforcement of the criminal law.

In the present case, while the forest fires may have been characterized as a natural "disaster" comparable to those discussed in 49 Comp. Gen. at 240, supra, there is nothing in the record which suggests that the National Guard's function in the field required the maintenance of law and order and the protection of property. The focus of their duties was to transport, feed, and provide life support to

the fire crews. Therefore, it is our view that such leave used by the VA employees for such duty is to be charged to annual leave, not military leave under 5 U.S.C. § 6323(b).

*for*   
Comptroller General  
of the United States