



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON 25

B-136314

August 5, 1958

Miss B. L. Jabin, Certifying Officer  
Public Health Service  
Department of Health, Education and Welfare

Dear Miss Jabin:

Reference is made to your letter dated May 28, 1958, requesting a decision as to whether a commissioned officer of the Public Health Service may be paid for leave accrued in excess of 60 days in the circumstances shown.

You relate that the officer was inactivated on April 10, 1958; that his annual leave record showed a balance of 46 days accumulated leave as of July 1, 1957, and 61 days as of January 1, 1958; and that he used 63 days' leave during the period January 20, 1958, to March 30, 1958. You ask "whether or not this officer may be paid for the days accrued during the six months, period July 1 through December 31, 1957." You say that doubt has arisen regarding the entitlement of the officer because of an amendment to the Public Health Service Regulations (section 21.81(a)) which changed the leave year from a fiscal to a calendar year basis commencing January 1, 1958.

In response to an informal request from your office, you submitted a voucher stated in favor of \_\_\_\_\_, San. Engr.(R) GT, representing active duty pay and allowances for April 10, 1958. Attached to the voucher is a payroll change slip with the remarks: "Inactivated cob 4/10/58 (PG-81) No Lump Sum Payment Authorized. Last paid thru March 31, 1958. Paid here for 9 days (4/1-9/58) instead of 10 days pending a decision on whether you can carry over more than 60 days 1/1/58. Leave card and clearance received."

The right to annual leave for commissioned officers of the Public Health Service is governed by the provisions of section 219 of the Public Health Service Act, as added by section 2 of the act of August 9, 1950, 64 Stat. 426, 42 U.S.C. 210-1, which provides in pertinent part as follows:

"(a) In accordance with regulations of the President, commissioned officers of the Regular Corps and officers of the Reserve Corps on active duty may be granted annual leave and sick leave without any deductions from their pay and allowances: Provided, That such regulations shall not authorize annual leave to be accumulated in excess of sixty days.

\* \* \* \* \*

"(c) \* \* \* If such officer is credited with unused accumulated and accrued annual leave on the date of his separation, retirement, or release from active duty, he shall, in the event that his application for such leave is approved by the Surgeon General, be compensated for such leave in a lump-sum payment on the basis of his basic pay, his allowance for subsistence, and the allowance for rental of quarters whether or not he is receiving such allowance on such date: Provided, that the number of days upon which such lump-sum payment may be computed shall not exceed sixty days: \* \* \*

"(d) For purposes of this section the term 'accumulated annual leave' means unused accrued annual leave carried forward from one leave year into a succeeding leave year, and the term 'accrued annual leave' means the annual leave accruing to an officer during one leave year." (Underlining supplied.)

Regulations issued pursuant to the above statutory authority and the authority granted in section 1(f) of Executive Order No. 10506 dated December 10, 1953, are contained in subpart F-Leave, 42 C. F. R. 21.81-21.95, in part as follows:

"21.81 Meaning of terms. For the purpose of computing and granting leave pursuant to this subpart:

"(a) A 'year' or 'leave year' means the period beginning July 1 of any calendar year and ending June 30 of the succeeding calendar year, except commencing January 1, 1958, such terms shall mean a calendar year.

\* \* \* \* \*

"21.81. Accrual and accumulation of annual leave. An officer shall accrue annual leave at the rate of 30 days for each full year of active service with the Service, and for any portion of a year at the rate of one day for each 12 consecutive days of such service. Annual leave accrued during a leave year, but unused at the end of such year, shall be carried forward as accumulated leave for use in succeeding leave years, except that accumulated leave credited to an officer at

the beginning of a new leave year in excess of 60 days shall be canceled. Annual leave taken during a Leave year shall be charged first against the leave accrued or to accrue during that year. No annual leave shall accrue (a) during any period of such leave immediately preceding the termination or inactivation of a commission, or retirement, (b) during any period in which an officer is placed on leave without pay while detailed pursuant to section 214 (b) or 214 (c) of the act, or (c) during any period of absence without leave."

Since prior to January 1, 1958, the leave year commenced July 1 of the calendar year and ended June 30 of the succeeding calendar year, the question for consideration here is whether under the current regulations and instructions the leave which the officer accrued during the period July 1 to December 31, 1957, can be considered as "accrued annual leave" rather than "accumulated annual leave" up to July 1, 1958, for the purpose of the 60-day limitation. In your submission you say that on April 16, 1957, the Office of the General Counsel, Department of Health, Education, and Welfare, rendered an opinion concerning the six-months period from July 1 to December 31, 1957, which opinion you quoted in part as follows:

"The 6 months<sup>1</sup> period from July 1 through December 31, is not now, and never has been, defined in the regulations as constituting 'a leave year'. If a leave year is a 12 months<sup>1</sup> period (and the references in the statute to annual leave indicates that such period was intended) leave accruing for a 6 months<sup>1</sup> period could not become accumulated leave in any less time. For the same reason, while January 1, 1958 will certainly be the beginning of a new leave year, it will not be the end of a leave year at which time cancellation of leave in excess of 60 days would be required."

It appears that following that opinion there was issued Public Health Service, Division of Personnel Circular No. 54-11 Sup. 1, dated April 30, 1957, to which you refer. We have been informally advised that the information set forth in that circular is presently contained in Section D, Commissioned Corps Personnel Manual, Guide 2 (CG26.4b Leave), in pertinent part as follows:

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- "1. Annual leave accrues on a calendar year basis, at the rate of 30 days for every year of continuous duty or, for part of a year, at the rate of 1 day of leave for each 12 consecutive days of duty.

- "2. Annual leave taken is first charged against leave accruing during the current calendar year and then against accumulated leave.
- "3. Effective December 31, 1958, <sup>1/</sup>an officer may not carry an annual leave balance of more than 60 days from one calendar year to <sup>1/</sup>another.

\* \* \* \* \*

"<sup>1/</sup>The leave year changes from a fiscal year to a calendar year basis, commencing January 1, 1958. In changing the leave year, there will be no cancellation of leave under any circumstances on January 1, 1958. Leave to the credit of an officer in excess of 75 days on July 1, 1958, will, however, be cancelled. Again on January 1, 1959, and each January 1 thereafter, all leave in excess of 60 days will be cancelled."

An examination of the legislative history of the above act of 1950, which amended the Public Health Service Act of 1944, shows that Congress intended to confer upon commissioned officers of the Public Health Service substantially the same leave benefits as were provided for members of the Armed Forces under the provisions of the Armed Forces Leave Act of 1946, 37 U.S.C. (1946 Ed.) 32-37. While the 1946 act did not include the right to use accrued annual leave during the fiscal year in which it accrued without regard to the 60-day limitation, such benefit was being considered by the Congress at the time of passage of the act of August 9, 1950, and was granted to members of the Armed Forces by the act of September 23, 1950, 37 U.S.C. (1952 Ed.) 31b.

The statute (42 U.S.C. 210-1) defines "accrued annual leave" as the annual leave accruing to an officer during one leave year. Under the regulations (42 C. F. R. 21.84), annual leave accrued during a leave year, but unused at the end of such year, is carried forward as accumulated leave for use in succeeding leave years, except that accumulated leave credited to an officer at the beginning of a new leave year in excess of 60 days is canceled. As a result of the change of the leave year from a fiscal year to a calendar year basis effective January 1, 1958, an officer is permitted under section D, Commissioned Corps Personnel Manual, Guide 2 (CG26.4b Leave) to accrue leave not to exceed 75 days as of July 1, 1958, provided that on January 1, 1959, leave in excess of 60 days is to be canceled. While under the law and the regulations a commissioned officer of the Public Health Service may not have "accumulated annual leave" to his credit in

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excess of 60 days, it does not appear that the period from July 1 to December 31, 1957, during which the officer accrued leave, is a "leave year" within the meaning of that term as defined in 42 C. F. R. 21.81. Since the six-month period involved is not a leave year, and in view of the changeover from a fiscal year to a calendar year basis, we are not required to question the action taken by the administrative office in treating the leave which accrued during the six-month period as "accrued annual leave," so as not to be subject to the 60-day limitation on January 1, 1958.

Accordingly, since the officer in the instant case had a balance of 46 days' accumulated annual leave on June 30, 1957, and since the 15 days' leave earned by him during the period July 1 to December 31, 1957, is considered as accrued annual leave, the officer was entitled to credit for both his accumulated annual leave (46 days) plus his accrued annual leave (15 days) as of January 1, 1958, or a total of 61 days' leave. Since one day's pay was withheld from pay otherwise due him during the period April 1 to 10, 1958, on the basis that he was not entitled to have in excess of 60 days on January 1, 1958, he is entitled to pay for that day. Payment on the voucher, which is returned herewith, is authorized on that basis if otherwise correct.

Sincerely yours,

FRANK H. WEITZEL

Assistant Comptroller General  
of the United States

Enclosure