

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

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FILE: **B-182804**DATE: **JUN 25 1975 97343**

MATTER OF:

**Eugene W. Whitman - Change of annual leave to sick
leave - retroactive**

DIGEST:

Employee entitled to use sick leave specifically requested that such time be charged to annual leave. After annual leave is granted, employee may not thereafter have such leave charged to sick leave and be recredited with the amount of annual leave previously charged for purposes of lump-sum payment upon separation for retirement.

The Federal Bureau of Investigation, Department of Justice, requests a decision as to whether absence which could have been charged to sick leave but was charged to annual leave at employee's request may thereafter be changed to sick leave with the annual leave included in a lump-sum payment upon separation for retirement.

The agency states the circumstances to be as follows:

"On July 1, 1974, Mr. Whitman suffered injuries in an automobile accident which required his absence from duty on sick leave until August 5, 1974. Thereafter, through October 9, 1974, it was necessary for him to be absent due to his injuries at irregular intervals. At his request, certain of this sick leave was charged to annual leave although he had several hundred hours of accrued sick leave to his credit. Specifically, annual leave was used in lieu of sick leave on the following dates:

4 hours on August 16, 1974
32 hours from August 20 through
August 23, 1974
8 hours on October 1, 1974
8 hours on October 9, 1974

"After making application for retirement, Mr. Whitman requested that the above 52 hours of annual leave which had been taken in lieu of sick leave be recharged to sick leave and such annual leave be

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included in his lump-sum annual leave payment. This request was denied in view of your Decisions B-142571 dated April 20, 1960, and B-164346 dated June 10, 1968. Mr. Whitwam has protested this Bureau's decision, stating that in view of Public Law 93-181, dated December 14, 1973, and Public Law 93-350, dated July 12, 1974, he does not think these two decisions are now valid. He has requested this matter be presented to the General Accounting Office for a decision."

In 31 Comp. Gen. 524 (1952) it was recognized that absence due to illness may be charged to accrued annual leave if timely requested by the employee and approved by the administrative office concerned. The charge for leave in Mr. Whitwam's absence appears to accord with that decision. There is nothing in the case as presented to indicate any misunderstanding on the part of the employee or administrative error by the agency in the matter.

The decisions cited by the agency, B-142571, April 20, 1960, and B-164346, June 10, 1968, hold that sick leave may not be retroactively substituted for annual leave granted specifically at the employee's request.

Public Law 93-181, approved December 14, 1973, amended title 5, United States Code, in pertinent part to improve the administration of the leave system for Federal employees. It provides for restoration of annual leave that was lost for the reasons set forth in the law, none of which relate to Mr. Whitwam's request. In this connection the Civil Service Commission in its FPM Letter No. 630-22 dated January 11, 1974, presents information on and transmits regulations implementing Public Law 93-181. In pertinent part letter 630-22 in item 5a(3)(c) at page 6 states as follows:

"(c) CSC Guidelines. Employees always have had the option of using annual leave in place of sick leave (or nonpay status) when the absence is related to illness and nothing in the new law prohibits this use. Employees may now have annual leave that was forfeited because of illness restored for later use
* * *."

As we read the record Mr. Whitwam has not lost any annual leave due to forfeiture. Rather it would appear that he has used annual

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leave in lieu of sick leave in a manner to which he is entitled and now changes his mind and would like to substitute sick leave for annual. For the reasons set forth in B-142571 and B-164346, he cannot do that.

With reference to Public Law 93-350 approved July 12, 1974, 88 Stat. 355, which amended title 5, United States Code, concerning the retirement of certain law enforcement and firefighter personnel, there appears to be no causal connection with Mr. Whitwam's request to retroactively substitute sick leave for annual leave previously granted.

Since Mr. Whitwam specifically requested that the absences in question be charged to annual leave, there is no authority upon which a substitution of sick leave for annual could be based. Accordingly, the agency denial of Mr. Whitwam's request is sustained.

R.F. KELLER

~~Deputy~~ Comptroller General
of the United States