

DOCUMENT RESUME

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[Entitlement to Military Leave for Armed Forces Reserve Training]. B-187704. May 6, 1966. 3 pp.

Decision re: Donald Hubbard; by Paul G. Dembling, Acting Comptroller General.

Issue Area: Personnel Management and Compensation (300).

Contact: Office of the General Counsel: Civilian Personnel.

Budget Function: General Government: Central Personnel Management (805).

Organization Concerned: Defense Supply Agency: Defense Personnel Support Center, Philadelphia, PA; Department of the Army: Army Reserve.

Authority: 5 U.S.C. 6323(a), as amended. 32 U.S.C. 502-505. Army Regulation 310-10, change 5. DOD Military Pay and Allowances Entitlements Manual, para. 80301.

A Federal employee sought conversion to military leave of annual leave charged for absences for military reserve training. Employees are entitled to military leave only for periods of active duty, but this employee's orders placed him in an inactive duty status for training. Neither an unauthorized amendment to the orders nor certificates from a commanding officer may change that status. Therefore, the annual leave charged may not be converted to military leave. (Author/SC)

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J. Carter
Air Pass



DECISION

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

FILE: B-187704

DATE: May 6, 1977

MATTER OF: Donald Hubbard - Entitlement to military leave for Armed Forces Reserve training

DIGEST: Employee seeks conversion to military leave of annual leave charged for absences for military reserve training. Employees are entitled to military leave only for periods of active duty. Orders here authorized inactive duty for training, were issued in accordance with regulations, and were sufficient to place employee in inactive duty status. Neither unauthorized amendment to orders nor certificates from commanding officer may change that status. Accordingly, annual leave charged may not be converted to military leave.

An authorized certifying officer of the Defense Supply Agency, Headquarters, Defense Personnel Support Center, has requested our decision concerning the propriety of restoring annual leave charged to Mr. Donald Hubbard, a military reservist, for periods of military duty performed on workdays.

On several occasions during the early part of 1975, Mr. Hubbard, a member of the United States Army Reserve, requested and was granted military leave in advance for the performance of weekend military duty which involved his absence from work on Friday. Subsequently, the agency determined that military leave had been improperly granted and converted these absences to annual leave. Mr. Hubbard contends that these grants of military leave were proper and seeks restoration of the annual leave he was charged for these absences.

The authority to grant military leave to Federal employees for the performance of military training or duty is set forth in section 6323(a) of title 5, United States Code, as amended. This section states in pertinent part:

"(a) an employee * * * is entitled to leave without loss in pay, time, or performance or efficiency rating for each day, not in excess of 15 days in a calendar year, in which he is on active duty or is engaged in field or coast defense training under sections 502-505 of title 32 as a Reserve of the armed forces or member of the National Guard."

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The reference to "field or coast defense training under sections 502-505 of title 32" refers to those sections of the United States Code appertaining only to National Guard members and not to members of an armed forces reserve. We therefore read this section as requiring that a member of an armed forces reserve organization must be on active duty in order to be entitled to military leave from that member's Federal civilian employment. In these circumstances, whether Mr. Hubbard is entitled to restoration of the annual leave charged for his absences to perform military duty depends upon his military status during the periods in which the duty was performed.

In this regard, the record shows that Mr. Hubbard is a member of the United States Army Reserve (USAR) assigned to the 949th Transportation Company (FC), Curtis Bay USAR Center, Baltimore, Maryland; he is reflected on crew lists as a Boatswain in pay grade E-6. Unit order bearing the transaction code "TC 481" was issued approximately 1 week in advance for Mr. Hubbard to perform inactive duty training (IADT) rather than active duty for the period March 3-6, 1976. We assume similar orders were issued for the other training periods in question. Sailing orders were issued on the days preceding these periods of duty directing movement of an Army vessel from the Curtis Bay USAR Center to a destination and return over a period encompassing Friday through Sunday.

The agency has taken the position that neither the unit order issued to Mr. Hubbard nor the sailing orders directing the vessel movements are orders to active duty and that Mr. Hubbard therefore is not entitled to military leave for these periods of duty. In response to the agency's position, Mr. Hubbard has furnished certificates executed by his commanding officer which state that he was on active duty during the periods in question and has also furnished a set of unit orders on which the word "inactive" has been erased and the word "active" substituted. The agency contends that this is not a proper modification of orders. For the reasons stated below, we concur in the agency's position regarding Mr. Hubbard's entitlement to military leave for these periods of extended weekend duty.

Under the provisions of AR 310-10, change 5, February 1, 1974, in effect at the time the duty was performed, TC-481 was used for the publication of orders authorizing the performance of inactive

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duty for equivalent training for pay and retirement points in lieu of scheduled assemblies by reservists. The regulations also specify the procedures to be followed to amend, rescind, or correct orders already issued.

We note that the purported change to Mr. Hubbard's order to authorize active duty for training was not accomplished in accordance with the requirements set forth in the regulations and that the only other evidence indicating Mr. Hubbard was on active duty is the certificates attesting to that fact executed by his commanding officer. Against this we must weigh the fact that Mr. Hubbard's orders, as issued, conform with all of the requirements of the regulations in authorizing inactive duty for equivalent training. We also have been advised that Mr. Hubbard received 2 days pay for each calendar day of duty performed on the occasions in question. This comports with the regulations governing pay for multiple unit training assemblies conducted on 1 day, i.e., a reservist may perform two drills (inactive duty) in a single day and receive 1 day's pay for each drill. See para. 80301, Department of Defense Military Pay and Allowances Entitlements Manual. We view this evidence as supporting a conclusion that these orders placed Mr. Hubbard in an inactive duty status for the periods of weekend duty in question and we are of the opinion that neither the attempted change to the orders nor the certificates from his commanding officer can serve to alter that status.

In these circumstances, we conclude that Mr. Hubbard was on inactive duty during these periods and therefore not entitled to military leave. Accordingly, the annual leave charged to Mr. Hubbard for the days in question may not be restored.

Paul B. Cumbly
Acting Comptroller General
of the United States