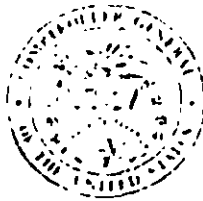


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DECISION



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

FILE: B-188145 **DATE:** November 15, 1977
MATTER OF: Pete Lewis, Jr. - Use of Military Leave

- DIGEST:**
1. Civilian employee whose regular workweek includes Sunday may not take military leave under 5 U. S. C. § 6323(a) (1970) to attend weekend drills. Employee is entitled to military leave under section 6323(a) only if he is on active duty under 10 U. S. C. § 270(a) (Supp. I, 1971) as member of reserve component of armed forces or engaged in field or coast defense training under 32 U. S. C. §§ 502-505 (1970) as member of National Guard. See 32 Comp. Gen. 363 (1953).
 2. Civilian employee, whose regular workweek includes Sunday and who takes annual leave on Sunday after military leave under 5 U. S. C. § 6323(a) (1970) is exhausted, may not receive overtime and differentials normally payable to employee in military leave status. Section 6323(a) limits entitlement to leave for military training without loss of pay, allowances, performance, or efficiency rating to maximum of 15 days per year and overtime is not payable to employee on annual or sick leave.
 3. Employee may not be charged military leave on nonworkday at beginning or end of period of military training when he was prevented from working overtime because of his military status since employee would not be required to perform overtime on such day.
 4. Employee may not take military leave on nonworkday on which he was prevented from working overtime due to attending weekend drill because military leave may not be used for such absence and may not be charged on nonworkdays other than intervening nonworkdays in period of continuing military duty.

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5. Employee may not take annual leave on nonworkday when military leave entitlement under 5 U.S.C. § 6323(a) is exhausted, as 5 U.S.C. § 6302(a) provides that days of leave under Annual and Sick Leave Act are exclusive of holidays and nonworkdays.
6. Although employee was prevented from working overtime on nonworkday because he attended military drill, he may not take annual leave to be eligible for overtime pay, since annual leave may not be charged on nonworkday.

By a letter dated December 3, 1976, Ms. Martha E. Albrecht, Director, Finance Department, Navy Regional Finance Center, Washington, D. C., forwarded a request for an advance decision by the Commanding Officer, Naval Supply Center, Norfolk, Virginia. The request concerns the use of military and annual leave by Mr. Pete Lewis, Jr., an employee of the Center, whose regular workweek is other than Monday through Friday. Mr. Lewis is a member of the Naval Reserve and is required to attend weekend drills on Sunday, a regular workday, as well as on Saturday, a nonworkday, when he is often scheduled for overtime work. In addition, Mr. Lewis misses work at the beginning and end of annual duty training each year while in a military travel status. The request for the decision was also accompanied by a voucher in favor of Mr. Lewis for pay on June 19, 1976, a nonworkday on which he attended a weekend drill with his reserve unit. Since Mr. Lewis did not work on that day, although he was scheduled for overtime on that day, Mr. Lewis requested annual leave to be eligible for overtime pay.

Specifically, the Commanding Officer asks the following questions:

- "Question 1. May a Naval Reservist use military leave, subject to the maximum allowable 15 days, to attend required weekly training drills, when such attendance would cause him to be absent from work?
- "Question 2. May an employee, who is granted annual leave to attend military training in excess of 15 days, be paid for differentials and overtime to which he would have been

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entitled had he been on military leave instead of annual leave?

- "Question 3. Should an employee of the Government be charged military leave for a non-workday at the beginning or end of an extended period of military training when he was prevented from working overtime on that day because of his military duty status?
- "Question 4. Would it be permissible to charge an employee military leave on a non-workday on which the employee was prevented from working overtime due to attending a weekend drill thereby entitling him to compensation for the overtime?
- "Question 5. Would it be permissible to grant an employee annual leave, in lieu of military leave, at his request, for a non-workday to entitle him to compensation for overtime which he was prevented from working due to absence on military training in excess of 15 days?"

Use of military leave to attend weekend drills which require employee to be absent from work.

Military leave for civilian employees of the Federal government is authorized by section 6323 of title 5, United States Code (1970), which states in pertinent part as follows:

"(a) An employee as defined by section 2105 of this title or an individual employed by the government of the District of Columbia, permanent or temporary indefinite, is entitled to leave without loss of 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

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under sections 502-505 of title 32 as a Reserve of the armed forces or member of the National Guard."

Hence, an employee is entitled to military leave only if he is on active duty as a member of a reserve component of the armed forces or if he is engaged in field or coast defense training as a member of the National Guard.

Training requirements for members of the National Guard are found at section 502(a) of title 32, United States Code (1970), which reads as follows:

"(a) Under regulations to be prescribed by the Secretary of the Army or the Secretary of the Air Force, as the case may be, each company, battery, squadron, and detachment of the National Guard, unless excused by the Secretary concerned,

:ll --

"(1) assemble for drill and instruction, including indoor target practice, at least 48 times each year; and

"(2) participate in training at encampments, maneuvers, outdoor target practice, or other exercises, at least 15 days each year."

Training requirements for members of reserve components of the armed forces are found at section 270(a) of title 10, United States Code (Supp. I, 1971), which states in pertinent part:

"(a) Except as specifically provided in regulations to be prescribed by the Secretary of Defense, or by the Secretary of the Treasury with respect to the Coast Guard when it is not operating as a service in the Navy, each person who is inducted, enlisted, or appointed in an armed force after August 9, 1955, and who becomes a member of the Ready Reserve under any provision of law except section 269(b) of this title, shall be required, while in the Ready Reserve, to --

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"(1) participate in at least 48 scheduled drills or training periods during each year and serve on active duty for training of not less than 14 days (exclusive of traveltime) during each year;

"(2) serve on active duty for training not more than 30 days during each year."

Although both members of the National Guard and members of reserve components of the armed forces are required to attend at least 48 scheduled drills or training periods per year under the above-quoted sections, the military leave entitlement found at 5 U. S. C. § 6323(a) applies only to absences for the field and coast defense training requirement of Guardsmen and the active duty training requirement for Reservists. Therefore, there is no authority to grant a Federal employee military leave under 5 U. S. C. § 6323(a) to attend weekend drills even though such an absence may require the employee to be absent from work. See 32 Comp. Gen. 363 (1953). Also, see Matter of Donald Hubbard, B-187704, May 6, 1977. Accordingly, question 1 is answered in the negative.

Granting of overtime and differentials to employee who takes annual leave when military leave is exhausted.

The entitlement to military leave under 5 U. S. C. § 6323(a) without loss in pay, allowances, performance, or efficiency rating is limited to a maximum of 15 days per year. Therefore, an employee who has exhausted his leave entitlement under section 6323(a) and takes annual leave would be entitled to only such pay as he would receive when he takes leave under the Annual and Sick Leave Act of 1951, as amended, 5 U. S. C. § 6301, et seq. The overtime laws contemplate actual work in order to be entitled to premium pay. Therefore, overtime pay may not be paid when an employee is on annual or sick leave. See 42 Comp. Gen. 195, 198 (1962) and 46 id. 217 (1966). Also, an employee whose regular tour of duty includes Sunday and who receives premium pay for Sunday work under 5 U. S. C. § 5546 is not entitled to premium pay, if he is on leave and does not work on Sunday. Moreover, night differential may not be paid to an employee who takes leave with pay totaling 8 hours. See 5 U. S. C. § 5545(a) (1970). Accordingly, an employee who takes annual leave while on military duty is not entitled to overtime, Sunday premium pay, or, when 8 hours of leave is taken, night differential.

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Use of military leave for nonworkday at beginning or end of extended period of military training when employee is scheduled for overtime work.

We believe that military leave, except for intervening nonworkdays wholly within a period of continuing active military duty (see B-133674, December 30, 1957), should be charged on the same basis as annual and sick leave is charged under chapter 63 of title 5, United States Code. In this connection the Federal Personnel Manual, chapter 630, subchapter 2-4a, provides that leave is charged only for absence on regular workdays, that is, days on which employees would otherwise work and receive pay. Leave is not charged for absence on holidays and nonworkdays established by Federal statute, Executive order, or administrative order. Question 3 asks whether an employee should be charged military leave for a "nonworkday" at the beginning or end of an extended period of military training when he was prevented from working overtime on that day because of the military duty status. We assume, since the word "nonworkday" is used in the letter of submission, that the overtime in question was not regularly scheduled such that the employee would have been required to perform the overtime duty during the period of absence. Accordingly, military leave may not be charged for such absence at the beginning or end of a period of extended military duty. See Matter of Lewis E. Keith, Jr. B-159835, March 11, 1976.

Use of military leave on a nonworkday on which the employee was prevented from working overtime.

In light of our answers to questions 1 and 3 our answer to question 4 is that an employee may not take military leave under section 6323(a) of title 5 on a nonworkday to attend a weekend drill.

Use of annual leave on a nonworkday in lieu of military leave when military leave is exhausted.


We have held in several decisions that an employee may be granted annual leave for purposes of performing military training in excess of the 15 days for which military leave is provided under 5 U. S. C. § 6323(a). 49 Comp. Gen. 233 (1969); 47 id. 761 (1968); 37 id. 255 (1957). However, there is no authority under which an employee may be granted annual leave for a nonworkday. Section 6302(a) of title 5, United States Code, provides that days of leave for which an employee would otherwise receive compensation under the Annual and Sick Leave Act are exclusive of holidays and nonworkdays. Accordingly, question 5 is answered in the negative.

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Regarding the voucher submitted for decision, the certifying officer states as follows:

"On Saturday, 19 June 1976, a nonworkday, Mr. Lewis attended a weekend drill with his reserve unit. On that day he was scheduled to work overtime but was unable to because of his military duty status. Mr. Lewis requested the use of annual leave in lieu of military leave to be eligible for the overtime pay. Enclosure (5) has been prepared for payment in the event the answer to question 5 is in the affirmative."

In view of our answer to question 5 the voucher may not be certified for payment.


Deputy Comptroller General
of the United States



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

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The Honorable Robert W. Daniel, Jr.
House of Representatives

Dear Mr. Daniel:

Further reference is made to your letter dated September 21, 1977, on behalf of Mr. Pete Lewis, Jr., of Portsmouth, Virginia.

Enclosed is a copy of our decision of today disallowing Mr. Lewis' claim for military leave for weekend drills and for annual leave on non-workdays. We regret that we were unable to be of more assistance to your constituent, Mr. Lewis. However, section 6323(a) of title 5, United States Code (1970) limits the use of military leave to active duty training and section 6302(a) provides that days of leave are exclusive of holidays and nonworkdays.

Sincerely yours,

R.F. KENNEDY

Deputy, Comptroller General
of the United States

Enclosure

UNITED STATES GOVERNMENT

GENERAL ACCOUNTING OFFICE

Memorandum

NOV 15 1977

TO : Director, Claims Division

FROM : Deputy
Comptroller General **R.F.KELLER**

SUBJECT: Claim of Pete Lewis, Jr. - B-168145-O.M.

Returned is claim file Z-2706725. The claim is being returned to the agency for disallowance in accordance with our decision of today, copy attached. Your file should be closed.

Attachments