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D. Gloss, Compt.

DECISION



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

FILE: B-190662

DATE: July 7, 1978

MATTER OF: Hugh J. Daly - Annual Leave Used in Lieu
of Sick Leave - Restoration Denied

DIGEST: Employee was injured on the job October 3, 1974. He used 200 hours of annual leave in lieu of sick leave to avoid forfeiture at end of 1974 leave year. Employee never returned to duty after injury and retired on disability April 22, 1976. Request for restoration of sick leave is denied, there being no loss of leave.

Captain W. H. Morse, U.S. Air Force Accounting and Finance Officer, Grand Forks Air Force Base, North Dakota, seeks an advance decision as to whether 200 hours of annual leave used by Hugh J. Daly while an employee of the Department of the Air Force may be restored under Pub. L. No. 93-181, 5 U.S.C. § 6304(j) (Supp. V, 1975).

According to the data submitted, Mr. Daly was injured on the job October 3, 1974. He has not returned to duty since the injury. He elected to use sick leave in lieu of being placed in a nonpay status to claim compensation under Office of Workers' Compensation Program (OWCP). When he was advised of his use-or-lose status, he elected to take annual leave between November 25 and December 31, 1974, and resumed sick leave January 2 through January 10, 1975. On January 11, 1975, Mr. Daly elected to claim OWCP benefits and entered into a nonpay status. He used 200 hours of annual leave in lieu of sick leave to avoid forfeiture at the end of the 1974 leave year. The record does not show that Mr. Daly's annual leave was scheduled in advance although the agency states he normally took annual leave during the latter part of each year. On February 26, 1976, Mr. Daly sought restoration of the 200 hours and requested that sick leave be substituted for the time on the thesis that the statutory changes brought about by Pub. L. No. 93-181 made it unnecessary for him to use or lose annual leave under the circumstances of his case.

It is stated that Mr. Daly retired on disability effective April 22, 1976. The agency reports he had 336 hours of unused sick leave at that time which was reported to the Civil Service Commission. The record before us is not clear as to whether Mr. Daly is still receiving OWCP benefits or civil service annuity.

B-190662

There appears to be no question in Mr. Daly's case for the application of the provisions of Pub. L. No. 93-181. That Act provides for restoration of annual leave lost for the reasons set forth in 5 U.S.C. §§ 6304(d)(1)(A), (B), or (C), i.e., administrative error, exigencies of the public business when the annual leave was scheduled in advance, or sickness of the employee when the annual leave was scheduled in advance. Here there was no forfeiture of annual leave. The request for restoration in fact is to the effect that Mr. Daly be permitted to substitute retroactively 200 hours of sick leave for the period November 25 through December 31, 1974. We find no basis to concur in such a request. See 54 Comp. Gen. 1086 (1975), affirmed B-182804, March 29, 1976, wherein it is held as follows:

"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 purpose of lump-sum payment upon separation for retirement."

Cf. B-191076, dated June 12, 1978, where agency on a case-by-case basis may allow retroactive substitution where an employee retires or dies during the same year in which the leave is taken and a timely request therefore is made.

Accordingly, the question raised as to restoration of annual leave for Mr. Daly is answered in the negative.


Deputy Comptroller General
of the United States