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AGAZARIAN

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

B-193559

May 5, 1981

The Honorable Jesse Helms
United States Senate

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Dear Senator Helms:

We refer further to your submission on behalf of your constituent, Mr. William Odell Garrison, concerning his claim for the recredit of involuntary sick and annual leave charged to him during the period August 30 through November 7, 1976.

In our decision B-193559, April 27, 1979, this Office determined that Mr. Garrison was not entitled to the recredit of leave since an agency may place an employee on involuntary leave when competent medical evidence indicates that he is incapacitated for the performance of his assigned duties.

The facts in this matter are fully set out in our determination of April 27, 1979, and were briefly restated in B-193559, July 17, 1980, which denied a request that the decision of April 27, 1979, be reconsidered and reversed.

In brief, the administrative report shows that the personnel working in the paint shop at the Naval Air Rework Facility, Marine Corps Air Station, Cherry Point, North Carolina, were required to wear safety goggles. An agency medical evaluation of August 26, 1976, concluded that Mr. Garrison was not physically qualified to safely perform his duties because of his eyesight until he received the appropriate prescription safety glasses. The agency advised that since there was no suitable vacancy in the Production Department to which Mr. Garrison could be assigned, he was placed on sick leave beginning August 30, 1976. The agency report states that on November 8, 1976, he was returned to duty and detailed to the position of preservation packager pending receipt of new prescription safety glasses which the agency had ordered. He was returned to his position as a painter on December 9, 1976, after receipt of the prescription safety glasses.

We have long held that an employee may be involuntarily placed on sick leave when the cognizant administrative officials determine, based upon competent medical evidence, that the employee is incapacitated for the performance of his assigned duties and that the involuntary leave, under

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these circumstances, does not constitute an unjustified or unwarranted personnel action within the meaning of the backpay provisions of the applicable statutes. Matter of Claudia M. Ferguson, B-186197, July 28, 1976, and Matter of William J. Heisler, B-181313, February 7, 1975, copies enclosed.

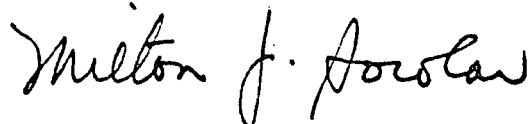
On the basis of the record before us we are unable to determine that the agency's action in placing Mr. Garrison on involuntary leave was improper as such action was predicated upon the medical evaluation of August 26, 1976. We see no reason why the agency should have questioned the medical evaluation at the time Mr. Garrison was placed on involuntary leave.

As set forth in our decision of April 27, 1979, this Office decides cases involving claims against the Government on the basis of the written record and we do not conduct adversary hearings to resolve material disputes of fact. Accordingly, this Office is not in a position to determine whether or not the original medical advice was correct and whether the remedial action taken was sufficient.

We note that there are no other administrative appeals open to Mr. Garrison. See 31 U.S.C. § 74 (1976). However, he may file suit in the United States District Court under 28 U.S.C. § 1346(a)(2) if the amount of his claim is less than \$10,000 or in the Court of Claims under 28 U.S.C. § 1491, no matter what the amount of the claim.

We trust that this will serve the purposes of your inquiry and regret that a reply favorable to Mr. Garrison is not possible. As requested by you, we are returning the enclosures submitted with your correspondence.

Sincerely yours,



Acting Comptroller General
of the United States

Enclosures