12148 PLM-1 Mrs. Wilcox

DECISION

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

FILE: B-193709 DATE: November 28, 1979 VA Employees

MATTER OF: ~~Veterans Administration~~ VA Employees Receiving Premium Pay--Absences on Holidays

DIGEST: 1. Veterans Administration employee receiving standby premium pay under 5 U.S.C. § 5545(c)(1) was excused from performing his regular duties at the Medical Center on holidays within his regular tour of duty, but was required instead to remain at his residence in a standby status. Requirement that he standby at home was proper exercise of VA's discretion under 56 Comp. Gen. 551 (1977) to determine extent to which employee's services are needed on holidays. However, since employee was not relieved from duty on those holidays, he should not have been charged leave while in a standby status.

2. Veterans Administration employees whose leave accounts were not recredited with leave charged for absences on holidays pursuant to 54 Comp. Gen. 662 (1975) prior to the date that decision was overruled by 56 Comp. Gen. 551 (1977) are not entitled to recredit of the leave charged. The determination in 56 Comp. Gen. 551 to forego collection action for lump-sum payments made for leave recredited and not to require correction of leave records for leave recredited pursuant to 54 Comp. Gen. 662 did not validate all claims that arose or were presented for payment between the dates of the two decisions. See 58 Comp. Gen. 345 (1979).

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This decision involves requests for recrediting of annual leave submitted by five employees of the Veterans Administration (VA) Medical Center, Martinez, California, and a similar request received from Curtis P. Curry, an employee of the VA Medical Center, Bonham, Texas. The five Martinez Medical Center employees are Obdulio Butler, Olivia Gill, Dorothy M. Hicks, Dover Price and Linda Talken. They have appealed from our Claims Division's settlements dated September 21, 1978, denying their requests for recrediting of leave. Although Mr. Curry's request for restoration of leave has not previously been considered by this Office, the VA has cited the September 1978 settlements in the other five

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cases as dispositive of the issue of his entitlement. While the Claims Division's determination with respect to the five Martinez Medical Center employees is in accordance with our decision in 58 Comp. Gen. 345 (1979), we find that the VA has failed to properly distinguish between their situations and Mr. Curry's.

The five Martinez Medical Center employees are individuals who regularly perform standby duty and receive standby premium pay under 5 U.S.C. § 5545(c)(1). Their requests for recrediting of annual leave are predicated on the VA's failure to reconstruct their leave accounts prior to April 19, 1977, the date of our decision in 56 Comp. Gen. 551 (1977). That decision overruled 54 Comp. Gen. 662 (1975) and held that an agency may excuse employees receiving standby premium pay from regular or standby duty without charge to leave when there has been an administrative determination that the employees' services are not required on a particular holiday. With respect to employees whose leave accounts had been recredited pursuant to 54 Comp. Gen. 662, the 1977 decision holds:

> "* * * We understand that, on the basis of 54 Comp. Gen. 662, supra., some employees have had their leave accounts retroactively recredited with annual leave and have received lump-sum leave payments or have taken leave to which they would otherwise not have been entitled. Since such payments or use of leave were made pursuant to 54 Comp. Gen. 662, no action is necessary and the employees may be considered properly to have been paid or to have taken leave. Also, inasmuch as there has been considerable confusion in this area, those employees who were not charged leave for absences on holidays prior to the date of this decision may be regarded as having properly been excused from duty on such days."

In April 1975 the VA instituted a policy regarding excusals for holidays consistent with 54 Comp. Gen. 662, but deferred any action to retroactively adjust leave balances pending issuance of specific guidelines. Guidelines were never issued and in May 1977 the VA instead issued superseding instructions consistent with 56 Comp. Gen. 551. It is the employees' contention that VA improperly deferred action to recredit their leave accounts

prior to April 19, 1977, with the result that 56 Comp. Gen. 551 now precludes the retroactive adjustments to which they believe they are entitled.

In 58 Comp. Gen. 345 (1979) we considered the question of whether employees whose leave accounts were not adjusted prior to April 19, 1977, in accordance with 54 Comp. Gen. 662 had any legal entitlement to be recredited with leave charged for holidays. We held that the above-quoted language from 56 Comp. Gen. 551 did not validate claims that arose or were presented between the dates of the two decisions but was intended to inform agencies which had recredited leave in reliance upon the 1975 decision that recovery of money paid or correction of leave records would not be required. The following statement from that decision is specifically directed to the situation of individuals whose leave accounts, like those of the five Martinez Medical Center employees, were not adjusted prior to April 19, 1977:

> "* * * if the leave was not recredited prior to April 19, 1977, neither the decision in 54 Comp. Gen. 662, nor the decision in 56 Comp. Gen. 551, provides authority for recredit of leave thereafter."

Accordingly, we sustain the Claims Division's determination that there is no basis for recredit of the leave charged in the accounts of the five Martinez Medical Center employees.

Mr. Curry's situation is distinguishable from that of the five Martinez Medical Center employees. He too received premium pay under 5 U.S.C. § 5545(c)(1) and until November 1978 he was charged leave for holidays falling within his regular tour of duty. However, unlike the other five employees, it does not appear that Mr. Curry was in fact relieved from duty on several of the holidays for which he was charged annual leave. The circumstances of Mr. Curry's case are set forth in a memorandum dated September 14, 1978, from the Director of the Bureau of Policies and Standards, Civil Service Commission as follows:

> "* * * Mr. Curry is required to perform standby duty at home on alternate Federal holidays. Another employee has the standby responsibility on

> the remaining holidays, thus assuring constant coverage during all holidays. Mr. Curry receives standby duty pay under 5 U.S.C. § 5545(c)(1) for his regularly scheduled standby duty. The Veterans Administration has designated Mr. Curry's home as his duty station for the period of the standby duty. When Mr. Curry performs standby duty at home on a holiday, and does not go to the hospital during his regular 8-hour workday, he is charged 8 hours of annual leave. * * * this is true even though Mr. Curry is required to remain on standby duty during his regular 8-hour workday.* * *"

The above memorandum concludes that under 56 Comp. Gen. 551 Mr. Curry should not have been charged annual leave for holdiays that he was excused from his regular duties at the hospital but nevertheless was required to remain in a standby status at his residence. The following finding, excerpted from that memorandum, has been concurred in by the Office of Personnel Management's Compensation Division.

> "Apparently the agency has made the determination that Mr. Curry's services are administratively necessary during the holiday. Under the Comptroller General decision, therefore, Mr. Curry would be charged leave if he were to absent himself on a holiday within his regularly scheduled tour of duty for personal reasons. However, Mr. Curry was explicitly required to perform standby duty at his home which had been designated as his official duty station. Therefore, he did not absent himself from duty during his regularly scheduled tour of duty and a charge of 8 hours of annual leave for the period of standby duty is improper."

The VA did not recredit Mr. Curry's leave account and continued to charge him leave until November 1978 when he was on standby duty at his home. The reason for such VA action was that it could not be administratively determined that Mr. Curry's services were not needed. Officials at the Bonham Medical Center are of the opinion that because it did not determine that Mr. Curry could be fully excused from his official responsibilities on those

holidays, our holding in 56 Comp. Gen. 551 requires that he be charged leave since he was absent from his regular duty station at the hospital.

We concur with the view expressed by the Office of Personnel Management that Mr. Curry should not have been charged leave on the holidays that he was required to remain in a standby duty status. An individual required to standby at his residence which has been designated as his duty station is deemed to be performing work for purposes of overtime and premium compensation under 5 U.S.C. §§ 5542 and 5545(c). Under Federal Personnel Manual Letter 551-14, May 15, 1978, such standby duty also qualifies as compensable overtime under the Fair Labor Standards Act. While the charging of leave to an employee's leave account is primarily a matter for determination by the agency, we know of no authority for an agency to charge an employee annual leave while at the same time requiring him to serve the agency under conditions that qualify as compensable hours of work. To sanction a charge to leave under these circumstances would defeat the purpose for which annual leave is provided--to allow every employee a period for rest and recreation and time off for personal and emergency purposes. See Federal Personnel Manual, chapter 630, subchapter 3-4a. In this regard, 5 C.F.R. 630.206 (1978) provides that an agency may not require an employee to perform work for any part of the leave period charged his account. This section deals specifically with charges to leave for periods of unauthorized absence or tardiness, but it nonetheless reflects the basic consideration that an employee is to be permitted to use annual leave for his own purposes.

The Bonham Medical Center's decision to require Mr. Curry to perform standby duty at home on holidays was dictated by proper management concerns--the necessity to provide continued coverage on holidays when reduced activity at the Medical Center did not require the employee's actual presence for his regular 8-hour tour of duty. The VA could have required Mr. Curry to remain at the Medical Center throughout the holiday. Instead, it allowed him to spend those holidays at home while providing needed coverage by requiring him to remain in a standby status. In this respect, the Bonham Medical Center acted within the bounds of its discretion to determine the extent to which an employee's services are or are not needed on a holiday.

In 56 Comp. Gen. 551 we specifically addressed the situation in which an agency determines that the employeee's services are not needed on a particular holiday and held that in that situation the employee could be excused from regular or standby duty without charge to leave. That discussion was not intended to suggest that the agency cannot otherwise accommodate its need on a holiday, such as by permitting the employee to remain on standby at home rather than needlessly remaining at the Hospital Center. The discretion to excuse an employee from all responsibilities when his services are not needed necessarily carries with it the discretion to excuse him from part of those duties, whether by requiring him to work for only part of the regular workday or by requiring him to remain in an on call or standby status at home or elsewhere. In those situations, the excusal is without charge to leave.

Accordingly, Mr. Curry's leave account should be recredited for periods prior to November 1978 that he was charged leave for holidays that he was required to remain in a standby status at home.

Milton J. Socolar

For The Comptroller General
of the United States