

DECISION

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

FILE: B-200665

DATE: April 16, 1981

MATTER OF: Reginald L. Campbell - Military Leave *Entitlement*

- DIGEST:
1. Employee of the District of Columbia was ordered to perform 20 days of full-time training duty and 15 days of annual field training as a member of the District of Columbia National Guard. Since full-time training duty directed under the authority of 32 U.S.C. § 502 is active duty, employee is entitled to military leave under 5 U.S.C. § 6323(a) for 15 of the 20 days of such duty. Because the additional 15 days of annual field training was ordered under the authority of title 39 of the District of Columbia Code, applicable specifically to the District of Columbia National Guard, he is entitled to military leave for that encampment under 5 U.S.C. § 6323(c).
 2. Employee of the District of Columbia was ordered to perform duty as member of District of Columbia National Guard for two periods that included holidays. Since the holidays in question were totally within the periods of absence on military leave, employee must be charged military leave for them. 27 Comp. Gen. 245 (1947).

The Executive Officer of the District of Columbia Courts has asked our Office to furnish advice regarding the military leave entitlement of Mr. Reginald L. Campbell, a full-time employee of the Superior Court of the District of Columbia. During three periods in 1979 Mr. Campbell took the leave in connection with his duties as an officer in the District of Columbia National Guard (DCNG). For the 14-day period from May 19 through June 1, 1979, Mr. Campbell was ordered to full-time training duty at the DCNG Officer's Candidate School (OCS), Fort Meade, Maryland. From June 23 through July 7, 1979, he was ordered to 15 days' annual training at Fort Pickett and for 6 days in December 1979 he was directed to perform full-time training duty which involved the ferrying of aircraft from Texas to Fort Belvoir, Virginia.

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The Executive Officer's questions concern the extent of Mr. Campbell's entitlement to military leave under the following two subsections of 5 U.S.C. § 6323 (Supp. I, 1977):

"(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 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.

* * * * *

"(c) An employee as defined by section 2105 of this title or an individual employed by the government of the District of Columbia, who is a member of the National Guard of the District of Columbia, is entitled to leave without loss in pay or time for each day of a parade or encampment ordered or authorized under title 39, District of Columbia Code. This subsection covers each day of service the National Guard, or a portion thereof, is ordered to perform by the commanding general."

The Executive Officer first asks whether Mr. Campbell may be granted military leave under 5 U.S.C. § 6323(c) for all three periods that he was on duty with the DCNG. More specifically, he asks whether civilian employees who are members of the District of Columbia National Guard are entitled to unlimited military leave under 5 U.S.C. § 6323(c) for all DCNG duty regardless of purpose if such duty is supported by orders from the

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Commanding General. If not, the Executive Officer asks whether leave in excess of the 15 days authorized by 5 U.S.C. § 6323(a) may be granted for purposes such as OCS training and the ferrying of aircraft.

Subsection 6323(c) is a substantial reenactment of section 608 of title 39 of the District of Columbia Code. In 27 Comp. Gen. 78 (1947) we recognized that the provision which currently appears as 5 U.S.C. § 6323(c) authorizes unlimited military leave for members of the DCNG for specific purposes. In that case, we held that the 15-day limit currently found in 5 U.S.C. § 6323(a) has no application to employee members of the DCNG who are entitled under 5 U.S.C. § 6323(c) to military leave with pay, without time limitation, when ordered by the Commanding General to duty in connection with parades or encampments.

We have held that leave under 5 U.S.C. § 6323(c) may not be granted without regard to the purpose of the military duty. In 19 Comp. Gen. 687 (1940) we stated (quoting from the syllabus):

"There is no limit on the number of days [of] military leave with pay which may be granted civilian officers and employees who are members of the National Guard of the District of Columbia when ordered to active duty of the kind for which such leave is authorized under the act of March 1, 1889, as amended * * *."

The terms of the 1889 act, which provided for the organization of the militia of the District of Columbia, are currently embodied in title 39 of the District of Columbia Code. The title is incorporated by reference in 5 U.S.C. § 6323(c). Examples of the kinds of duties under title 39 for which such leave would be authorized are encampments, drills, and parades.

This Office has disapproved the use of military leave under 5 U.S.C. § 6323(c) to perform certain activities not within the scope of title 39 of the District of Columbia Code. In 15 Comp. Gen. 633 (1936)

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we held that the authority now contained in 5 U.S.C. § 6323(c) has no application to periods of attendance at a service school by members of the District of Columbia National Guard. In 6 Comp. Gen. 635 (1927) we held that that authority did not extend to participation by members of the DCNG in rifle tournaments in a foreign country. In reaffirming 6 Comp. Gen. 635 (1927) in A-17476, May 5, 1927, we rejected the argument that employees of the United States or District of Columbia who were members of the DCNG were entitled to unlimited military leave for any duty the Commanding General thought proper.

In answer to the Executive Officer's first question, while there is no specific limit on the duration of leave under 5 U.S.C. § 6323(c), such leave can be taken only for encampments, parades or other duties ordered or authorized under title 39 of the District of Columbia Code.

The term "encampment" as used in 5 U.S.C. § 6323(c) includes annual field training performed pursuant to the requirements of title 39 of the District of Columbia Code. The annual training duty performed by Mr. Campbell at Fort Pickett was directed by orders which cite 32 U.S.C. § 503, the general authority for participation of members of the National Guard in "encampments * * * or other exercises for field or coast defense instruction," as well as Permanent Order 14-1 promulgated by Headquarters for the DCNG. The Permanent Order relies in part on the authority of title 39 of the District of Columbia Code to require annual encampments of the DCNG. Thus, the 15 days of annual training duty performed by Mr. Campbell would qualify for military leave under either subsection 6323(a) or 6323(c). See 44 Comp. Gen. 224 (1964).

The two periods of full-time training duty performed by Mr. Campbell were directed by orders issued under the authority of 32 U.S.C. § 502(f). Because the duty did not involve an encampment or parade and because it was not otherwise ordered or authorized under title 39 of the District of Columbia Code, it does not come within the purview of subsection 6323(c) and Mr. Campbell is not entitled to unlimited leave therefor. However,

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Mr. Campbell may be granted military leave under 5 U.S.C. § 6323(a) for 15 of the 20 days that he was on full-time training duty. As used in that subsection and as defined at 32 U.S.C. § 101(22), the term "active duty" includes full-time training duty. Thus, subject to the 15-day limitation contained in that section, Mr. Campbell's time in a full-time training status qualified for military leave under 5 U.S.C. § 6323(a).

For 1979, Mr. Campbell should be granted 15 days of military leave under subsection 6323(a) for the time that he was in a full-time training duty status and he is entitled to military leave under subsection 6323(c) for the 15 days that he performed annual training duty at Fort Pickett.

The Executive Officer's final question relates to the fact that a holiday occurred during each of the first two periods of DCNG duty performed by Mr. Campbell. He asks whether Mr. Campbell's absence on these two holidays should be charged to military leave.

In computing leave of absence under 5 U.S.C. § 6323 nonworkdays, including holidays, must be charged to military leave unless the nonworkdays are not wholly within a period of absence on military leave. 27 Comp. Gen. 245, 253 (1947). Since the two holidays in question, Memorial Day and Independence Day, were wholly within the periods of DCNG duty Mr. Campbell must be charged military leave for them.

Milton J. Fowler

Acting Comptroller General
of the United States