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DECISION



21604
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-206515

DATE: April 23, 1982

MATTER OF: James Isaak - Terminal Leave - Accrual of
Sick and Annual Leave

DIGEST: An employee on sick leave at the time his disability retirement was approved should be afforded the opportunity to select a separation date which is most advantageous to him in accordance with Office of Personnel Management regulations. He is also entitled to be credited with sick and annual leave accrued while on sick leave prior to his separation date. Section 402 of Pub. L. No. 96-499 does not affect an employee's right to holiday pay before his separation date.

The issues considered are whether an employee may continue on leave with pay after his disability retirement application has been approved and whether he accrues sick and annual leave during this period. Also, we are asked to decide whether such an employee is entitled to receive credit for holidays falling within the leave with pay period in view of section 402 of Pub. L. No. 96-499, 94 Stat. 2605, December 5, 1980, which eliminates payment for holidays that occur after an employee separates but within the period covered by the employee's lump-sum leave payment.

For the reasons stated below, we hold that an employee, whose disability retirement application has been approved by the Office of Personnel Management, is entitled to (1) remain on sick leave with pay in accordance with OPM regulations; (2) to continue to accrue annual and sick leave during such period; and (3) to receive pay for holidays during the same period.

These questions were presented in a letter of February 17, 1982, from the Chief, Payroll Branch, Bonneville Power Administration, Department of Energy, Portland, Oregon. The employee in question is Mr. James Isaak. Mr. Isaak suffered a heart attack on July 29, 1981, and has been on sick leave,

except for 33 hours of annual leave, since that time. As of August 8, 1981, Mr. Isaak had 273 hours of annual leave and 2,663 hours of sick leave to his credit. On September 21, 1981, he applied for disability retirement which was approved by the Office of Personnel Management (OPM) on November 4, 1981. Mr. Isaak remains on sick leave not to exceed his last day of eligibility for paid leave.

The agency reports that Mr. Isaak's use of his sick leave in these circumstances does not explicitly serve the exigencies of the service and that it has not made a determination that an exigency existed so as to confer an entitlement to terminal leave. The agency reports that it is, therefore, uncertain as to Mr. Isaak's entitlement to terminal leave, and the consequent calculation of his last day of pay.

It has long been the position of this Office that administrative authority to grant an employee terminal annual leave immediately prior to separation from the service, when it is known in advance that the employee is to be separated, is limited to cases where the exigencies of the service require such action. 54 Comp. Gen. 655, 658 (1975); 34 Comp. Gen. 61 (1954). The terminal leave rule is incorporated into the Federal Personnel Manual (FPM) provisions concerning employees who are granted disability retirement by OPM. However, there are special rules for such employees who have sick leave to their credit at the time when OPM notifies the employing agency that disability retirement is allowed. The provisions governing separation of an employee pursuant to the approval of a disability retirement are found in Federal Personnel Management Supplement 831-1, subchapter S10-11(a) which states in part:

"(1) If the employee is on annual leave and has no sick leave, the employee will be separated as soon as practical, but usually not later than the end of the pay period in which the approval is received. If the employee is on annual leave and has sick leave to his or her credit, the agency shall consult with the employee to

determine if the employee wishes to be placed on sick leave for any portion of that time to his or her credit or wishes to be separated immediately and have the sick leave used in the computation of annuity payments. There should be no delay in making the determination, as continuation on terminal leave is inappropriate (34 Comp. Gen. 61).

"(2) If the employee is on sick leave, the agency shall consult with the employee who will select the date of separation which is most desirous or advantageous.

"(3) If the employee is on duty, the agency shall consult with the employee who will select the date of separation which is most desirous or advantageous. The employee should either request that he or she be placed on sick leave immediately or separated usually not later than the end of the pay period in which the retirement approval is received."


Since Mr. Isaak was on sick leave at the time his disability retirement was approved, he should be afforded the opportunity to select a separation date which is most advantageous to him in accordance with the Federal Personnel Management Supplement provision quoted above.

In response to the question raised as to whether Mr. Isaak may be credited with sick and annual leave accruing in pay periods during which he is on sick leave after the approval date and prior to his separation date, leave may properly accrue to the credit of an employee in a terminal leave status. B-161875, December 19, 1967; B-121712, October 28, 1954.

The final question raised is whether section 402 of Pub. L. No. 96-499, the Omnibus Reconciliation Act of 1980, 94 Stat. 2599, has any effect on Mr. Isaak's right to receive credit for holidays falling within his leave period. Section 402 of the Act amends 5 U.S.C. § 5551(a)

to eliminate payment for holidays that occur after an employee retires but within the period covered by the employee's lump-sum leave payment. The amendments provide that the period of leave used for calculating the lump-sum payment shall not be extended due to any holiday occurring after the employee's separation. Section 5551 of Title 5, United States Code, had previously been interpreted to require payment for any holidays that occurred after the employee's separation and within the period covered by the lump-sum leave payment. Section 402 does not, however, affect an employee's right to holiday credit before the employee's separation date and while he is still in a paid leave status.

Accordingly, assuming that a later separation date is most advantageous to Mr. Isaak, he is entitled to remain on sick leave with pay not to exceed his sick leave eligibility period. During the period of sick leave, he continues to accrue both sick leave and annual leave to his credit and continues to be entitled to be paid for intervening holidays. When his sick leave account is exhausted, the agency is required, under the terminal leave rule cited above, to separate him as soon as practical. He is then entitled to be paid a lump-sum leave payment for his annual leave balance. Finally, under section 402 of Pub. L. No. 96-499 he is not entitled to pay for holidays during the period covered by his lump-sum leave payment.

for 
Comptroller General
of the United States