

DECISION



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

FILE: B-220749

DATE: *March 21, 1986*

MATTER OF: Roberto De La Cruz

DIGEST:

Federal civilian employees who leave their positions to pursue military careers are eligible under regulation for a recredit of their civil service sick leave after their retirement from military service, if they are reemployed in a civilian capacity by the Government within the following 3 years. Hence, an individual who left civil service employment when called to active military duty, and who was subsequently retired from military service after completing 20 years' active duty, may be allowed a recredit of his civil service sick leave balance upon his reemployment as a civilian 1 year later. The fact that he had a 2-month break in service during his military career is immaterial, since only a break in service in excess of 3 years could have operated to extinguish his leave restoration rights.

Mr. Roberto De La Cruz requests recredit of civil service sick leave he earned during his federal civilian employment between 1952 and 1962, predicated on his retirement from military service in 1979 and his reemployment in a civilian capacity by the Government in 1980. On the basis of the facts presented, and the applicable federal regulations, we conclude that Mr. De La Cruz' application should be approved.

Background

Mr. De La Cruz was a federal civil service employee between 1952 and 1962. He had previously served 3 years of military service, and in 1962 he was recalled to active military duty with the Air Force. He remained on active duty during the following 17 years until 1979, when he applied for military retirement based on his completion of 20 years' total active service.

In 1980, approximately 1 year after his retirement from military service, Mr. De La Cruz received an appointment to a civil service position with the Air Force. He then applied for restoration of the unused civil service sick leave with which he had been credited at the time of his recall to military duty in 1962.

Issues

The concerned Air Force officials recognize that federal civilian employees who are called to military service may later be eligible for restoration of their unused civilian leave if they are reemployed in the civil service within 3 years of their separation from active military duty. The officials also indicate that while no certification can now be located showing the number of sick leave hours Mr. De La Cruz had at the time he returned to military duty in 1962, they will nevertheless be able to reconstruct his sick leave account and compute the number of hours to be recredited if his application for a restoration of leave may properly be approved.

The Air Force officials essentially indicate that their doubts in this matter arose because Mr. De La Cruz was not required to serve and did not serve on active military duty continuously between 1962 and 1979. Rather, he was separated from active duty on July 30, 1971, and he then reentered active duty on his own initiative on October 13, 1971, after a break in service of more than 2 months. The officials question whether his separation from military service on July 30, 1971, and his election not to seek reemployment in the civil service within 3 years of that date may have operated to extinguish his leave restoration rights.

Analysis and Conclusion

Chapter 63 of title 5, United States Code, authorizes civil service employees to accrue sick leave at the rate of one-half day for each biweekly pay period, and provides that sick leave not used by an employee may accumulate for use in succeeding years. See 5 U.S.C. § 6307(a) and (b). The Office of Personnel Management is assigned broad responsibility for prescribing regulations necessary for the administration of annual and sick leave. See 5 U.S.C. § 6311.

Longstanding implementing regulations adopted by the Office of Personnel Management to govern the recrediting of leave of employees following periods of military service, currently contained in Part 630 of title 5, Code of Federal Regulations, provide that:

"When an employee leaves his civilian position to enter the military service, the agency shall certify his leave account for credit or charge. When the employee is:

* * * * *

"(b) Reemployed in a position under subchapter I of chapter 63 of title 5, United States Code, not more than 3 years after his separation from active military duty;

"the agency in which he is restored or reemployed shall reestablish the certified leave account as a credit or charge."
5 C.F.R. § 630.504.

We have held that under this provision of the regulations, persons reemployed in a civilian capacity within 3 years of their retirement from military service may be allowed restoration of the sick leave credited to them many years earlier at the time they left their civilian positions to pursue an active duty military career, if surviving records or other available sources of information provide a sufficient basis for certification of their prior leave balances. See John H. Adams, B-209769, March 28, 1983; and B-164220, September 5, 1968.

In the present case, Mr. De La Cruz left his civil service employment in 1962 and pursued an active duty military career in the Air Force. During the following 17 years he had an opportunity to leave military service, and he apparently had to elect whether to continue a military career, to return to civil service employment, or to turn to some other endeavor. In our view, however, this did not adversely affect his leave restoration rights under the provisions of 5 C.F.R. § 630.504, quoted above. All members of the armed forces who complete a military career and are retired on the basis of their years of service are given opportunities during their careers when they must elect to continue or to terminate their careers. That is, enlisted

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service members are periodically separated from service and discharged upon the expiration of a term of enlistment, and they must then decide whether to apply for reenlistment. Also, military officers generally must decide whether to remain on active duty after they have completed a term of obligated service. As indicated, however, we have held that civil service employees who elect to undertake long-term active duty military careers retain their civil service leave restoration rights under the regulations and may be allowed a recredit of sick leave if they are reemployed in the civil service within 3 years of their military retirement.

Moreover, we view it as immaterial that during his military career Mr. De La Cruz had a break in service that lasted more than 2 months in 1971. Although the wording of the regulation is not entirely clear in this regard, our view is that his sick leave restoration rights could not have been properly extinguished on account of a break in federal service unless the break in service exceeded a continuous 3-year period. We have consulted officials of the Office of Personnel Management having responsibility for the civil service leave regulations, and they concur in this conclusion.

Accordingly, Mr. De La Cruz should be allowed recredit of the unused sick leave he had in 1962 at the time he left his civil service employment when recalled to active military duty.

for Milton J. Aoustan
Comptroller General
of the United States