



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Schofield C. Ford--Military Leave--Pay for
Civilian Services Performed
File: B-222967
Date: June 2, 1987

DIGEST

1. An employee of the Government Printing Office (GPO), after initially reporting for 14 days of active duty for training with his Air Force Reserve unit returned to GPO on the first day of his military duty and performed 7-1/2 hours of overtime work on a nonregularly scheduled day of work. Once an employee reports for active military duty he may not be paid for performing his normal civilian duties, since active military duty is incompatible with civilian service with the Government.

2. When an employee of a Government agency reports for active duty for training he should be placed in a military leave status on the first day for which he was regularly scheduled to work and continued in a military leave status until the last regularly scheduled workday, including intervening nonworkdays, such as holidays and weekends, occurring within his tour of active duty.

DECISION

An authorized official of the United States Government Printing Office (GPO) requests an advance decision regarding whether Mr. Schofield C. Ford may retain overtime pay for hours he worked in his civilian position after he reported for his first day of 14 days of active duty for training with his Air Force Reserve unit. An additional question is posed concerning whether he should be charged military leave in his civilian position for the first day of military duty. For the following reasons, we hold that (1) Mr. Ford is not entitled to retain the compensation he was paid for the overtime he performed, and (2) he should not be charged military leave for his first day of active duty for training since this was not a regularly scheduled workday for him.

Mr. Ford, a printing plant worker at the GPO, was ordered to report on Sunday, June 24, 1984, to Andrews Air Force Base

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for 14 days of active duty for training. He reported as ordered and was placed in an active duty for training status. After performing some military duty on Sunday, Mr. Ford was allowed to leave Andrews Air Force Base. He then returned to GPO and worked 7-1/2 hours of overtime during the period from 4:30 p.m. to 12:30 a.m. GPO informs us that Sunday was not a regularly scheduled day of work for Mr. Ford, and he was not required to perform this overtime. He was placed in a military leave status commencing on June 25 for each day that he was regularly scheduled to work with no charge for intervening nonworkdays, a total of 9 days of military leave.

The first question is whether it was proper to pay Mr. Ford for the overtime he worked on June 24 in view of several decisions of our Office holding that it is incompatible for a person to be on active duty in the military and also to be employed in a civilian position with the Government.

As a general rule, an individual on active duty military service may not be employed in a civilian capacity with the Government. See e.g., 47 Comp. Gen. 505, 506 (1968) and citations therein. We have held that the rendition of services to the Government in a civilian capacity by a member of the armed services on active duty is incompatible with the member's actual or potential military duties and payment for such services is not authorized in the absence of specific statutory authority. This is the case even though the civilian services are rendered during military members' hours of relaxation or time provided to attend to personal affairs. See 64 Comp. Gen. 395, 399-400 (1985).

However, civilian employees of the Federal Government, who are also members of the Reserve components of the Armed Forces, are partially exempted from this rule. That is, employees who perform active duty as members of a Reserve component of an armed service are entitled to be placed on military leave without loss of pay from their civilian positions for up to 15 days in a fiscal year. 5 U.S.C. § 6323(a)(1).

Military leave granted under 5 U.S.C. § 6323(a) commences on the first regularly scheduled workday and ends on the last regularly scheduled workday included within a member's tour of active duty. Additionally, a charge to military leave is assessed for intervening nonworkdays. Thus, after employees report for active duty with a Reserve unit, they may continue

to receive their civilian compensation in addition to their military compensation while they are in a military leave status. Moreover, an employee may receive overtime pay if the overtime is regularly scheduled and the employee would have been required to perform the overtime duty had he not been on military leave. Lewis E. Keith, Jr., B-159835, March 11, 1976.

During a period that an employee such as Mr. Ford, is subject to military control under active duty orders, the employee may not simultaneously be regarded as present for work in his civilian position, since civilian service is incompatible with military duty status. See George McMillian, B-211249, September 20, 1983. However, the employee may be credited for civilian work performed before he becomes subject to military control on the first day of the active duty period, and for civilian work performed after release from military control on the last day of the active duty period. See 52 Comp. Gen. 471 (1973). Since Mr. Ford performed the overtime after he came under military control, he is not entitled to the overtime pay he received. Therefore, the compensation he received should be collected from him. See 64 Comp. Gen. 395, 400, supra.

Since the payment of the overtime compensation to Mr. Ford was improper or erroneous, we invite attention to 5 U.S.C. § 5584. That statute provides that the head of an agency may waive the recovery of erroneous payments of pay and allowances aggregating not more than \$500, when collection of the erroneous payment would be against equity and good conscience and not in the best interests of the Government and there is no evidence of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining the waiver.

The second question posed by GPO asks our advice concerning the proper leave status for Mr. Ford on Sunday, June 24, 1984. We note that Mr. Ford, whose regularly scheduled workweek at the GPO was Monday through Friday, was charged 9 days of military leave beginning Monday, June 25, through Friday, July 6.

Military leave is not charged for nonworkdays at the beginning or end of a period of military duty. Pete Lewis, Jr., B-188145, November 15, 1977. Therefore, GPO properly did not charge him with military leave for Sunday, June 24, or for Saturday, July 7. However, military leave is charged for all intervening nonworkdays within an individual's tour of active

duty including weekends and holidays. See 61 Comp. Gen. 558, 559 (1983); Reginald L. Campbell, 60 Comp. Gen. 381, 384 (1981).

Accordingly, Mr. Ford also should have been charged military leave for Saturday and Sunday, June 30, and July 1, and Wednesday, July 4 (Independence Day Holiday), which with the other 9 days properly charged him, totals 12 days.

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for Comptroller General
of the United States