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The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: Emmitt Sheridan - Lump-Sum Leave Payment -  
Terminal Leave -  
File: B-223876  
Date: June 12, 1987

## DIGEST

An employee took approved annual leave for all of the next to last pay period of the leave year and for all workdays except the last administrative workday of the last pay period of the leave year and then retired. The lump-sum leave payment he received did not include credit for 16 hours of annual leave which had accrued for those two pay periods because the agency deemed it to be the granting of leave on leave in violation of the terminal leave restriction. The leave credit is allowed. Terminal leave occurs when leave is taken after the employee has performed his last day of active duty. Since the employee was present for and performed duty on the last administrative workday of the pay period in which he retired, such leave used immediately prior to that day is not violative of the terminal leave restriction. Aurora D. Rives, B-190374, January 20, 1978, distinguished.

## DECISION

This decision is in response to a request from the Chief, Fiscal Accounting Section, Federal Communications Commission. It concerns the entitlement of Mr. Emmitt Sheridan to be credited additional annual leave for lump-sum payment incident to his retirement at the close of business on January 3, 1986.

## BACKGROUND

Mr. Sheridan, a former employee of the Field Operations Bureau, Federal Communications Commission, was authorized to take annual leave from December 8, 1985, through January 2, 1986. At the close of the pay period immediately preceding the approved leave period (December 7, 1985), Mr. Sheridan had an annual leave balance of 360 hours.

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We understand that at an earlier time when Mr. Sheridan's immediate supervisor approved his leave request, the supervisor was aware that Mr. Sheridan had expressed the intention to retire in the near future. Apparently, the supervisor was not aware of the exact date of Mr. Sheridan's projected retirement, nor of the general prohibition against approving terminal leave immediately prior to retirement.

While Mr. Sheridan was on leave, the administrative staff of the Field Operations Bureau and the agency's personnel office processing staff contacted Mr. Sheridan and advised him that in order to avoid the consequences of a terminal leave situation, he would have to return to his duty station prior to retirement. As requested, Mr. Sheridan was present at his duty station and in a duty status for 8 hours on Friday, January 3, 1986, the last day of the agency's administrative workweek, and his retirement became effective at the close of business that day.

Following retirement, Mr. Sheridan received a lump-sum payment for 224 hours of unused annual leave. This did not include credit for 8 hours of leave accrual for the pay period ending December 21, 1985, nor 8 hours accrual the pay period ending January 4, 1986. The basis for withholding those leave credits was the agency view that to do otherwise would constitute the granting of leave on leave in connection with retirement (terminal leave) and in the second instance, that he retired before completing the entire last pay period of the leave year.<sup>1/</sup>

In view of the fact that Mr. Sheridan did return to work on the last day of the agency's administrative work week (Friday, January 3, 1986), the agency is uncertain whether they properly withheld annual leave credits, but cite to our decision Aurora D. Rives, B-190374, January 20, 1978, among others, as having application here.

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<sup>1/</sup> Because of the irregularity of his administratively established work schedule for the last pay period, Mr. Sheridan's last day of work was scheduled to be Saturday, January 4, 1986. However, he completed his scheduled tour of duty through the use of annual leave and by reporting for duty on Friday, January 3.

Based on the above, the following questions are asked:

1. Is one workday in an active duty status immediately preceding separation from Federal Service, and immediately following an extended period of annual leave sufficient to avoid a terminal leave situation, or, if not, what guidelines should apply?
2. Is there a difference if management was unaware of the employee's intention to separate prior to approving the period of annual leave and the employee's one-day return to duty?
3. In the event that your response to question 1 is "No" would an employee be entitled to payment for holidays which fall within a period of terminal leave but would not be included in a lump-sum payment under current law?

#### RULING

Generally, terminal leave is annual leave taken at the conclusion of a period of service and immediately before separation or retirement without the employee being present at his work station and in a work status at the end of the workweek or pay period in which he separates or retires. Our decisions have held that agencies may not grant an employee terminal leave immediately prior to separation from Federal service when it is known in advance that the employee is to be separated, except where the exigencies of the service require such action. See 54 Comp. Gen. 655, 658 (1975), and 34 Comp. Gen. 61 (1954).

On the other hand, we believe, that annual leave used by an employee immediately prior to his last day of active duty is not terminal leave. Therefore, since Mr. Sheridan was present for duty and performed duty on the last administrative workday of the last pay period in the leave year (January 3, 1986), such leave as he used immediately prior to that day is not violative of the terminal leave restrictions, and Mr. Sheridan is entitled to a lump-sum payment for the additional 16 hours of accrued leave.

Although the agency cites our decision in Aurora D. Rives, cited above, the circumstances in Rives were different than the present case. In Rives, we considered the issue of the terminal leave restriction in a case where an employee worked all of her final pay period except for the last 6 hours of the last administrative workday, which apparently was the amount of annual leave she otherwise accrued at the

beginning of her last pay period. We concluded that since she substantially worked the entire period, the rule regarding terminal leave would not apply and, thus, she could accrue annual leave at the beginning of the period and use it for the last portion of her last day. Thus, our decision in Rives is distinguishable from the present case where the employee used annual leave prior to his last day of active duty.

This responds to question 1, and question 3 requires no answer. With regard to question 2 concerning management's knowledge of his intention to retire, we respond as follows. Where an employee is separating from Federal service by his own volition, actual separation cannot occur before the date all necessary documents required to be executed by the employee are so executed. While an employee may express the intent to voluntarily separate at some time in the near future, it cannot be concluded by management with any assurances that he will so separate at that time since the employee could always change his mind. However, it is suggested that where notice of intention to separate is expressed by the employee to management, the employee should be promptly counseled regarding his obligations, rights and benefits.

*for* *Henry D. Jan Claus*  
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