



United States  
General Accounting Office  
Washington, D.C. 20548

Office of the General Counsel

B-250175

January 6, 1993

Joseph F. Scinto, Esq.  
Deputy General Counsel  
Nuclear Regulatory Commission  
Washington, D. C. 20555

Dear Mr. Scinto:

This further replies to your letter of August 31, 1992, asking whether it would be appropriate to grant Mr.

sick leave in lieu of annual leave he has already used to provide care and assistance for his seriously ill son. We conclude that the governing regulation does not authorize use of sick leave in the circumstances you describe.

The Office of Personnel Management prescribes the regulations governing the use of sick leave, pursuant to 5 U.S.C. §§ 6307 and 6311. The regulatory provision governing the availability of sick leave allows it to be used by an employee providing care and assistance to a family member only when the family member "is affected with a contagious disease." 5 C.F.R. § 630.401(c) (1992). Also, in defining such a disease, the regulations make it clear that not every contagious disease qualifies, since they define such a disease as one which--

"is ruled as subject to quarantine, requires isolation of the patient, or requires restriction of movement by the patient for a specified period as prescribed by the health authorities having jurisdiction." 5 C.F.R. § 630.201(b) (3) (1992).

Mr. states that his son was hospitalized for a pulmonary embolism and resultant cardiac arrest, later determined to be attributed to a rare blood disorder which causes abnormal clotting, and his condition is complicated by cerebral palsy. Mr. took annual leave at various times while his son was hospitalized to help care for him because he required virtually full-time care beyond that afforded by the hospital. He requests that this annual leave be retroactively changed to sick leave and future

absences he may incur to assist his wife in taking his son to medical and dental appointments be charged to sick leave.

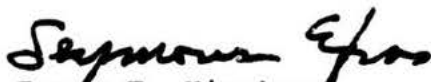
Although there is no question in this case that Mr. [redacted]'s son has serious medical conditions and is in need of assistance, he does not appear to have a contagious disease within the meaning of the regulations. Mr. [redacted] himself writes that ". . . my son's medical condition is not a communicable disease. . . ." In a case very similar to this one where the employee's son was undergoing a bone marrow transplant and the father had to be present during the treatment as a possible blood donor, we held that the agency properly denied sick leave to the employee when he was standing by to donate and not actually donating blood because sick leave is not available for time spent in caring for an ill, albeit non-contagious, family member.

, B-231477, Oct. 7, 1988, copy enclosed.

In B-238784, June 15, 1990, and 36 Comp. Gen. 183 (1956), to which you refer, we did recognize that in order for an illness to be considered as "contagious" it was not necessary for the patient actually to be under quarantine but only that his movements be restricted by local health authorities. However, the reason for the restricted movement of the patients in those cases was that they were afflicted with "contagious" illnesses for which the health authorities required that the patients' movements be restricted to prevent spread of the disease. It was not because of an inherent, restrictive nature of the illness that would restrict the patient's movement regardless of its contagiousness.

Therefore, under the current regulations it appears that Mr. [redacted] may not use sick leave to care for his son in the described circumstances.

Sincerely yours,

*for*   
James F. Hinchman  
General Counsel

Enclosure

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DIGEST

Employee who was away from work in order to provide care and assistance for his seriously ill son claims sick leave should be granted instead of the annual leave granted by the agency. Employee may be granted sick leave only if the son's illness is contagious and his movement is restricted by the health authorities. Since the son's illness is not contagious and his movement was restricted because of the nature of the illness and not because the health authority restricted movement to prevent spread of a contagious illness, the employee may not be granted sick leave.