

507625

11858

PL 111-11

GAO

United States General Accounting Office
Washington, DC 20548

Office of
General Counsel

In Reply
Refer to: B-195694

October 30, 1979

Mr. Effort Alexander
3407 Winchester P. W.
Apartment #4
Memphis, Tennessee 38116

Do not make available to public reading

Dear Mr. Alexander:

This is in response to your letter of August 1, 1979, forwarded here by the Personnel Officer of the Memphis District of the Corps of Army Engineers, asking for a ruling of this Office concerning military leave for part-time career employees. Although a decision of the Comptroller General is not being issued at your request, the following information may be useful to you.

It has long been a position of this Office that the benefits of the Military Leave Act do not extend to part-time employees of the Federal Government. In our decision 35 Comp. Gen. 5 (1955) we determined that statements in the legislative history of the laws authorizing military leave precluded extending such leave to part-time employees. Those provisions are presently codified in 5 U.S.C. 6323(a) (1976). Particularly section 4 of the act of July 1, 1947, 61 Stat. 239, specifically provided that the words "officers and employees of the United States or of the District of Columbia" as used in the military leave statutes "shall be construed to mean all officers and employees of the United States or of the District of Columbia, permanent or temporary indefinite, without regard to classification or terminology peculiar to the Federal Civil Service System."

On page 2 of Senate Report No. 327, 30th Congress, to accompany H.R. 1845 which became the act of July 1, 1947, the purpose of the provision quoted above was explained as follows:

"This bill clarifies which type of employees are entitled to military leave. In the past, temporary indefinite employees, who might work for many years for the Government, were not entitled to such leave. This bill permits permanent and temporary indefinite employees to receive military leave. It excludes, however, the purely temporary



B-195694

employees, who are those employed for a definite tour of duty for periods of less than 1 year, and part time or intermittent employees."

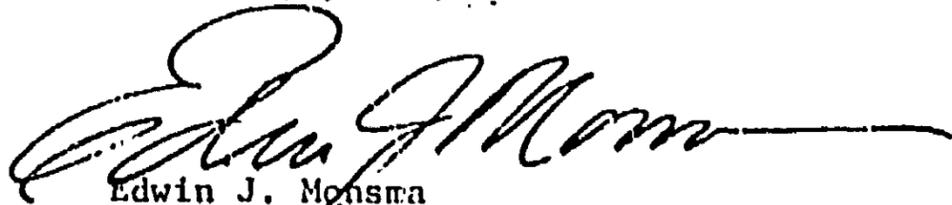
Therefore, the Congress indicated that the statute was not intended to cover part-time or intermittent employees and that the addition of the words "permanent or temporary indefinite" should not be construed to that effect. Where the Congress intended part-time employees to receive military leave, it has so provided by specific legislation. See the act of June 22, 1956, 70 Stat. 331, which authorized military leave for substitute postal employees. (Repealed by Public Law 91-375, 6(c)(18)(B), Aug. 12, 1970, 84 Stat. 776.) In the consideration thereof a provision which would have established military leave generally for part-time employees with regularly scheduled tours of duty was rejected. See the hearings on H.R. 3744 before the Subcommittee of the Committee on Armed Services, United States Senate, June 7, 1956, at pages 11-17.

Therefore, the Congress, in restricting eligibility for military leave to "permanent or temporary indefinite" employees (5 U.S.C. § 6323(a)), excluded from eligibility employees having part-time appointments.

The Federal Employees Part-Time Career Employment Act of 1978, October 10, 1978, Public Law 95-437, 92 Stat. 1056, extended to part-time career employees the benefits of the Civil Service Retirement System, 5 U.S.C. 8347(g) (Supp. II, 1978), Federal Employees Group Life Insurance, 5 U.S.C. 8716(b) (Supp. II, 1978), and the health benefits program, 5 U.S.C. 8913(b) (Supp. II, 1978). However, there was no amendment extending to part-time career employees the benefits of military leave. The language of 5 U.S.C. 6323 has remained essentially the same since our decision in 35 Comp. Gen. 5.

We trust the information provided will be of assistance to you.

Sincerely yours,



Edwin J. Monsma
Assistant General Counsel