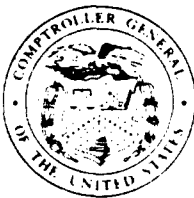


DECISION

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

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FILE:

B-183178

DATE:

JUL 22 1975

MATTER OF:

**Mr. Albert R. Martin--Denial of Sick Leave--
Optional Retirement**

DIGEST:

Employee who is optionally retired may not be restored to the payroll in order to be granted accumulated sick leave at the time of retirement since there is no authority for restoring an employee to the rolls of his former agency for the purpose of granting such leave unless there was a bona fide error or a violation of a valid regulation in effecting the separation.

This action is a review of an agency denial of sick leave pending application by an employee for disability retirement.

The record shows that Mr. Albert R. Martin was employed as the Chief of the Quality Assurance Branch (W.S. 12) of the Maintenance Division, Directorate of Industrial Operations, Department of the Army, at Fort Sill, Oklahoma. He was placed on extended sick leave beginning September 6, 1973, after he submitted a report from his physician stating that he was allergic to certain environmental elements such as fumes and dust which he was exposed to while performing duties and that such exposure would aggravate existing respiratory problems.

On January 22, 1974, his agency requested Mr. Martin to return to duty to be detailed to the position of Electronic Equipment Adviser in a different work location after preventive medicine personnel from the installation hospital had determined that the new location was essentially free of objectionable environmental elements. It is stated that Mr. Martin's physician agreed Mr. Martin could work under the conditions described. Mr. Martin filed a Standard Form 52 requesting disability retirement on January 17, 1974. Mr. Martin was advised on January 22, 1974, that sick leave no longer would be approved since he was not incapacitated to perform the duties assigned to him. Additionally, the agency states that its representatives explained in detail the alternatives open to Mr. Martin, including an explanation that the Civil Service Commission regulations--Subchapter S10-11, FPM Supplement 831-1--provided employees a virtual right to use accumulated sick leave upon approval by the Commission of disability retirement; but that otherwise, management had the right to detail employees to duties within their physical capabilities and to deny the use of sick leave. Mr. Martin then filed a Form

B-183178

Accordingly, the agency denial of sick leave is affirmed.

R. F. HILLER

[Deputy] Comptroller General
of the United States

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52 requesting optional retirement effective February 1, 1974. It is also stated that Mr. Martin was informed that he would be expected to work in the detailed position pending approval of disability retirement, and that he chose optional retirement instead.

Mr. Martin chose to take annual leave beginning January 22, 1974, and except for the days during which he was scheduled for physical examination in connection with his application for disability retirement, he remained on annual leave until February 1, 1974, the date he applied for and received optional retirement. He is now appealing the decision that was made by his agency that he would not be permitted to remain on sick leave until he had exhausted the 1,297 hours of sick leave which he had to his credit at the time of his optional retirement on February 1, 1974, and he requests that he be afforded the full benefit of sick leave status as of that date and that his retirement be adjusted accordingly.

Mr. Martin has submitted a copy of a Supplemental Annuity Statement from the Civil Service Commission dated March 7, 1975, which states that his annuity has been changed to disability effective February 2, 1974.

There is no statutory authority for reimbursing an employee for sick leave not granted prior to his separation from service, and there is no authority for restoring an employee to the rolls of his former agency for the sole purpose of granting such leave unless there was a bona fide error or a violation of a valid regulation in effecting the separation.

With respect to charging leave, it has long been the position of our Office that it is primarily a matter for the administrative office concerned. See generally 39 Comp. Gen. 250, 251 (1959); B-182085, December 24, 1974. Thus, when sick leave is refused or an employee is placed in absence-without-leave status by administrative action, we have generally held that this Office is without authority to grant such leave or to authorize payment therefor.

Here, the agency decision not to grant additional sick leave, after a medical determination that the duties to which Mr. Martin would be detailed were within his physical capabilities, appears to be a valid exercise of discretionary agency authority.

The fact that, subsequent to Mr. Martin's voluntary retirement, the Civil Service Commission approved his physical disability retirement retroactively effective to February 2, 1974, does not, in our opinion, have the effect of invalidating retroactively the otherwise proper action of the agency in disallowing the sick leave pending the determination as to disability.