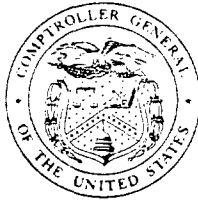


PL I

**DECISION**



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

9755

FILE: B-192956

*per name*

DATE: April 9, 1979

MATTER OF: Jeff E. Titus - Involuntary Leave

*[Claim for Restoration of Leave for Period of Involuntary Sick Leave]*

- DIGEST:
1. Initial letter to VA employee putting employee on involuntary sick leave pending medical examination is proper notice since it had been approved by Hospital Director before it was issued and set forth reasons for action pending medical examination to determine his fitness for performing duties.
  2. Initial administrative action to place VA hospital police officer on involuntary sick leave pending fitness-for-duty examination is justified where conduct of employee, after on-the-job injury, raises question concerning his ability to perform duties of position without disrupting hospital patients and personnel. Sick leave may not be restored since, after scheduled medical examination, employee was found not fit to perform duties of position and VA Central Office concurred with such finding after thorough review of file.
  3. Less than 7-week period for agency to make final determination sustaining initial action of placing employee on involuntary sick leave was not an unreasonable period of time where agency had to schedule various medical tests and examinations when initial tests were inconclusive, necessitating additional tests.

Mr. Jeff E. Titus, through his attorney, requests reconsideration of his claim for restoration of leave for the period August 5 through September 25, 1977, during which time he was involuntarily placed on sick leave by the Veterans Administration (VA) pending a determination of his fitness for duty. The claim was disallowed by our Claims Division on August 17, 1978. The basis of Mr. Titus' request for reconsideration is that the VA's action procedurally and substantively violated appropriate statutes and regulations. Also, Mr. Titus believes that even if the VA's initial action was proper, he should be credited with some portion of the sick leave because the VA took an unreasonable amount of time in making its final determination.

AGC 00016

~~JOHN~~

B-192956

The VA placed the claimant, a member of the Battle Creek, Michigan, VA Hospital Police Force, on involuntary sick leave because of various incidents following his on-the-job injury of April 11, 1977, which raised serious questions as to his ability to perform his duties. This action was taken on August 5, 1977, pending the results of an investigation and a fitness-for-duty examination which the VA scheduled for August 8, 1977. The VA informed the claimant of this by letter of August 5, 1977, which also indicated that the action was being taken pursuant to VA Manual MP-5, Part 1, chapter 630, paragraph 10c(3) and paragraph 11h (paragraphs 10c(3) and 11h). Mr. Titus reported for the examination on August 8 and various medical tests were scheduled which were completed on August 29. On August 31, 1977, the Personnel Physician indicated that the tests were inconclusive and additional medical tests were needed. The tests were scheduled for September 2, 1977, and completed on that date. On September 19, 1977, the Personnel Physician notified the Chief of the Personnel Service that the medical tests indicated that Mr. Titus was presently medically unfit to perform the duties of a police officer but could perform duties in a less demanding position. By letter of September 22, 1977, the claimant was advised, through his attorney, of this conclusion and was offered the position of clerk typist which he accepted on September 25, 1977.

Mr. Titus alleges that the initial action of placing him on leave was contrary to the regulation because the Hospital Director did not approve the action as is required in paragraph 10c(3). This paragraph states that the placing of an employee on involuntary sick leave outside the Central Office requires the approval of "the station head." The record indicates that Mr. Titus' supervisor, after receiving reports from eye witnesses concerning Mr. Titus' alleged improper conduct in the restraint of a patient, recommended that he be placed on involuntary sick leave. The Chief of Personnel and the Director of the Hospital approved such action. Therefore, the approval requirements of paragraph 10(c)(3) were met.

The claimant alleges that the VA action violated a provision of the Lloyd-La Follette Act, now codified in 5 U.S.C. § 7501 (1976), because the VA failed to provide Mr. Titus with anything in writing which indicated that his removal as a police officer would promote the efficiency of the police force or that his presence would constitute an emergency situation. In this connection, Mr. Titus is

incorrect. Clearly, a fair reading of the letter he received on August 5, 1977, adequately indicates that Mr. Titus' performance in subduing the patient raises the question of whether his conduct was acceptable for a police officer and whether conduct of this sort could be tolerated within a hospital setting. When Mr. Titus received written notice that the medical findings indicated that he did not meet the standards required of a hospital police officer, this was a finding that the previous incidents were likely to be repeated and that this could not be tolerated within a hospital setting where such incidents were disruptive to the doctors, nurses, and patients.

Mr. Titus complains that he was given erroneous information at several points by the hospital Personnel Office. A review of the record indicates that the erroneous information consisted solely of misinformation regarding the filing of a grievance which was inappropriate to contest this type of agency action. When the VA realized the grievance procedure did not apply in Mr. Titus' case, it informed his attorney of the appropriate statutory provisions and procedure. An examination of the records indicates that this misinformation, except for delaying Mr. Titus' appeal for a short time, in no way prejudiced his claim.


Mr. Titus alleges that the VA determination to place him on involuntary sick leave was erroneous because he was fit for service. After Mr. Titus received a medical examination on August 5, 1977, and follow-up tests the VA Personnel Physician found that he was not fit to perform the duties of a policeman. Later, after a thorough review of the medical file in the Central Office of the VA, the Associate Deputy Chief Medical Director for Operations concurred with the determination to place Mr. Titus in an involuntary leave status. Under such circumstances we may not substitute our judgment for that of the VA. B-184706, January 12, 1976; B-181313, February 7, 1975; 41 Comp. Gen. 774, 776 (1962).

→ Finally, we have been asked, if we find no basis for reversing the initial action of the VA, to restore a portion of the sick leave on the ground that the final determination took an unreasonable amount of time. The facts of the instant case clearly demonstrate that the final determination was made within a reasonable time. It took approximately 3 weeks to complete and evaluate the initial medical examinations and tests and approximately another 3 weeks

B-192956

to complete and evaluate the additional medical examinations and tests. As the tests and examinations involved scheduling appointments with various doctors and medical technicians, the period, which was less than 7 weeks, cannot be deemed an unreasonable amount of time. Thus, there is no basis for recrediting any of the sick leave to Mr. Titus.

Accordingly, the disallowance of Mr. Titus' claim is affirmed.

  
Deputy Comptroller General  
of the United States