

DECISION

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

21721
118281

FILE: B-199477

DATE: May 3, 1982

MATTER OF: Corie Sue Freeman - Payment for unused sick leave

DIGEST: Former employee of Government of District of Columbia sought lump-sum payment for 5 and one-half days accumulated sick leave at time of her resignation, which was more than 18 months after beginning maternity leave. We find no basis which would allow for a lump-sum payment for unused sick leave upon her resignation. Further, grievance hearing officer's decision, rendered under collective bargaining agreement, not to allow maternity leave date to be amended 18 months later for the purpose of granting sick leave is not arbitrary or capricious and, therefore, will not be overturned by GAO.

The Washington Teachers' Union (Union) and the Public Schools of the District of Columbia (Public Schools) have jointly submitted to the Comptroller General for decision the claim of Mrs. Corie Sue Freeman, a former teacher in the Public Schools. The Union contends Mrs. Freeman is entitled to be compensated for the sick leave she had to her credit at the time of her resignation from the Public Schools. For the reasons explained below, the claim is denied.

Since the District of Columbia government is a legal entity separate and distinct from the United States Government, this Office has no jurisdiction to settle claims by or against the District of Columbia. 36 Comp. Gen. 457 (1956); 1 *id.* 451 (1922). Upon request by appropriate officials of the District of Columbia government, the Comptroller General will, however, issue decisions to the District of Columbia government. 47 D.C. Code § 121 (1981). Since this request for a decision is submitted by an appropriate official of the Government of the District of Columbia, we will render a decision.

The facts as set out in the January 7, 1980, decision of Mr. William S. Rice, the grievance hearing officer, are as follows. Mrs. Freeman requested maternity leave on February 26, 1977, which was granted at approximately the same time. When Mrs. Freeman began her maternity leave she had 5 and one-half days of accrued sick leave to her credit. She did not request the use of this sick leave at the time she began her maternity leave. Approximately 18 months later, by letter dated August 29, 1978, Mrs. Freeman submitted her resignation, effective September 1, 1978. At the same time she requested an amendment of the beginning dates of her maternity leave, that would allow her to receive credit and get paid for the 5 and one-half days sick leave that she had accrued but had not used. By letter dated October 6, 1978, the Director of Personnel denied Mrs. Freeman's request to be paid for the leave.

Thereafter, the Union filed a grievance and the grievance procedure progressed through a Step 3 grievance hearing under the agreement between the Board of Education and the Union. The Union's position before the hearing officer was that the Public Schools violated Chapter II of the Board of Education rules which states that an employee, when on maternity leave, may use any accrued sick leave with pay following the last day of service. The Union additionally believes that it was misled by the Public Schools, since it counseled Mrs. Freeman on the course of action which the Public Schools advised she should take in order to get paid for her accrued sick leave, and Mrs. Freeman followed that advice, but she was not paid for her leave. Therefore, the Union believes that Public Schools should be estopped from denying payment for the leave in question.

The Public Schools' position before the hearing officer was that the request by Mrs. Freeman was denied because of the "great length of time" between granting her a maternity leave of absence and her request for the use of her accrued sick leave. The request to use the sick leave was made at the time of her resignation, approximately 18 months after she began her maternity leave. The Public Schools' representative admitted that there had been an earlier discussion with the Union representative about the possibility of amending maternity leave effective dates. However, the Public Schools' representative maintained that the discussion had been general in nature and there was no mention of Mrs. Freeman's specific case with all its ramifications.

Finally, the Public Schools' representative maintains that "prior general discussions of personnel matters do not constitute an agreement or promise of any kind."

The hearing officer issued his determination on January 7, 1980, denying the grievance. He found that since neither the specific facts of the grievant's case, nor her name, were mentioned in the conversations, the suggestions made or advice given by the Personnel Office could not be taken as a commitment on the part of the Division of Personnel. Further, the hearing officer found that the implication of the statement in the Rules of the Board of Education referred to above that "[t]he employee may use any accrued sick leave with pay following the last day of service" is that the employee would make the election to use sick leave when applying for maternity leave and that the sick leave would be used at the beginning of the maternity leave period.

Now the Public Schools and the Union have requested a ruling from our Office to resolve the matter at issue and to avoid further litigation. At the outset, we find there is no statutory authority for reimbursing an employee for sick leave not granted prior to her separation from service and there is no authority for restoring an employee to the rolls of the former employing 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. B-162628, December 27, 1967. In B-156534, April 26, 1965, we noted that:

"[t]he law provides for the granting of sick leave in kind only, that is, permission to be absent from duty because of incapacity without loss of pay. It may be granted only to employees on the rolls of a department and it may not be granted former employees who have been separated from the service by retirement, resignation or otherwise. Further, the law does not provide for a lump-sum payment, upon separation, for sick leave as it does for annual leave."

Under 5 U.S.C. § 5551(a) (1976), employees who are separated from Federal or D.C. service are entitled to lump-sum payment for all accumulated and accrued annual

leave, but there is no similar statutory provision for lump-sum payment of sick leave. However, unused sick leave to an employee's credit at the time of retirement may be added to the employee's total Federal service for the purpose of computing an annuity. See 5 U.S.C. § 8339(m) (1976). In addition, an employee who is separated from the Federal service or the government of the District of Columbia is entitled to recredit of her unused sick leave if reemployed within 3 years from the date of separation. See 5 C.F.R. 630.502(b)(1) (1981). However, there is no statutory authority permitting payment to a separated employee for unused sick leave. Patricia J. Brown, B-201773, March 4, 1981; Loyd E. Eitel, B-190152, November 30, 1977.

The Union's suggestion that Mrs. Freeman could have avoided her present predicament had she returned to duty and immediately used her accrued sick leave is inconsistent with the guidance contained in the Federal Personnel Manual (FPM) chapter 630, subchapter 4-2b which provides that an agency has the authority and responsibility for granting sick leave and determining that the "reasons for which sick leave is granted are true." This authority is further delineated in FPM Supplement 990-2, book 630, subchapter S4-2b which provides as follows:

"b. Agency authority. (1) Administrative authority. The granting of sick leave in accordance with the controlling regulations is an administrative responsibility. The nature of the evidence required to determine whether an employee was incapacitated must of necessity be left to administrative determination, bearing in mind the possibility of abuse (23 Comp. Gen. 186)."

Federal Personnel Manual Supplement 990-2, book 630, subchapter S1-3a(1) provides that the head of an agency is responsible for maintaining an account of leave for each employee. Therefore, it is within the proper discretion of an agency head or his representative, to deny a request for sick leave and make a determination of the proper leave status for an employee during any period in question.

In cases such as this one, in which we are called upon to review the decision of a grievance hearing officer, we will uphold that decision if it is consistent with the laws, regulations, and our decisions. John H. Brown, 56 Comp. Gen. 57 (1976). We have reviewed the decision rendered here, and find it to be consistent with legal authority, and neither arbitrary, capricious, nor an abuse of discretion.

For the above reasons, we sustain the hearing officer's determination of January 7, 1980, which denied Mrs. Freeman's claim for payment for her unused sick leave at the time she resigned.

Milton J. Fowler

Acting Comptroller General
of the United States