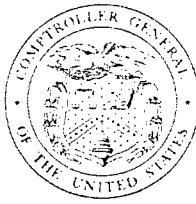


PLM-TT

DECISION



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

9619

FILE: B-127474

DATE: March 27, 1979

MATTER OF: ~~F~~ Holiday premium pay ^g Leaves of absence ^{land}
~~F~~ Excused absence ^{requested clarification of}

Holiday Pay
Leave
Compensation
Claims

Age 489

DIGEST: Department of the Navy asks if the intent of 56 Comp. Gen. 551 (1977) requires deduction of leave credited under 54 Comp. Gen. 662 (1977) but unused as of April 19, 1977, and whether related claims unresolved between the dates of the two decisions are valid. Such leave recredited prior to April 19, 1977, remains available for use. The determination in 56 Comp. Gen. 551 to forego collection action for lump-sum payments made for leave recredited and not to require correction of leave records for recredited leave taken pursuant to 54 Comp. Gen. 662, did not validate all claims that arose or were presented for payment between the dates of the two decisions. Rather, it was to inform agencies that corrective action would not be required for actions allowing claims taken prior to April 19, 1977, pursuant to 54 Comp. Gen. 662.

The Office of Civilian Personnel, Department of the Navy, seeks clarification regarding the application of 56 Comp. Gen. 551 (1977) which overruled the ruling in 54 Comp. Gen. 662 (1975). The 1975 decision held that certain employees receiving premium pay under 5 U.S.C. 5545(c)(1) should have leave restored to them which was charged to them for absences on holidays. In the 1977 decision we held that an employee in receipt of annual premium pay under 5 U.S.C. 5545(c)(1) (1970) at a rate determined in accordance with 5 C.F.R. 550.144(a) who performed work on holidays or was charged annual leave for holidays falling within his regularly scheduled tour of duty is not entitled to holiday premium pay or restoration of annual leave charged. Such employee may be excused without charge to leave if his agency determines his services are not required on a particular holiday.

Specifically, we have been asked the following questions:

504768

B-127474

(1) Is any leave recredited under 54 Comp. Gen. 662 which remained to an employee's account on 19 April 1977 to be deducted as of that date?

(2) If the answer to question (1) above is in the negative, is all leave recredited based on 54 Comp. Gen. 662 to remain for credit and use, irrespective of 56 Comp. Gen. 551?

(3) For those employees whose leave accounts were not adjusted in accordance with 54 Comp. Gen. 662 prior to 19 April 1977, does there exist any legal basis to now credit their leave accounts?

Although the situation in question (1) was not addressed in 56 Comp. Gen. 551, there was no intent that such leave be deducted effective April 19, 1977. On the contrary such leave remains for credit and use. Questions (1) and (2) are answered accordingly.

With regard to claims paid pursuant to the decision in 54 Comp. Gen. 662 (1975), we stated in 56 Comp. Gen. 551 (1977):


"* * * Since such payments or use of leave were made pursuant to 54 Comp. Gen. 662, no action is necessary and the employees may be considered properly to have been paid or to have taken leave. Also, inasmuch as there has been considerable confusion in this area, those employees who were not charged leave for absences on holidays prior to the date of this decision may be regarded as having properly been excused from duty on such days." (Emphasis added.)

The above determination did not validate all claims that arose or were presented for payment between the dates of the two decisions, February 5, 1975, and April 19, 1977. Rather, it was meant to inform agencies which had relied upon the 1975 decision and had recredited leave and made lump-sum payment on claims or authorized leave to be taken, that recovery of money paid or correction of leave records would not be required. See B-192815, February 26, 1979. The decision of February 26, 1979, suggests that leave restored under 54 Comp. Gen. 662 would remain available for use after April 19, 1977, the effective date of 56 Comp. Gen. 551.

B-127474

Thus, if an employee's claim was allowed and leave restored prior to April 19, 1977, no action is to be taken by the agency to correct leave records. However, if the leave was not recredited prior to April 19, 1977, neither the decision in 54 Comp. Gen. 662, nor the decision in 56 Comp. Gen. 551, provides authority for recredit of leave thereafter.

Accordingly, question three is answered in the negative.


Deputy Comptroller General
of the United States