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

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B-171947

July 9, 1973

Mr. Robert H. Willey, Director
Office of Civilian Manpower Management
Department of the Navy

Dear Mr. Willey:

We have for consideration the letter of Mr. Malcolm L. Wade, a former employee of the Military Sealift Command, Department of the Navy, concerning the leave charges made prior to his separation on November 27, 1972.

On the basis of the materials furnished by Mr. Wade, copies of which are enclosed, it appears that he left the ship on which he was an employee on October 17, 1972, and was placed in an annual and shore leave status until his accumulation of such leave had expired. Later when his eligibility for sick leave during that period was established and proper records of his sick leave were available to administrative office involved, his leave status was changed and extended to cover the full period between his entering on leave status and his separation. Sick leave was available to him to cover all but 3 days of that period and a charge was made accordingly. The remaining 3 days were charged to shore leave, however, since Mr. Wade had 5 days of accumulated shore leave and since shore leave may not be made the basis for a lump-sum payment he forfeited 2 days of shore leave upon separation. The Military Sealift Command has refused Mr. Wade's requests for a substitution of these forfeited days of shore leave for sick leave which had been charged. Apparently Mr. Wade was employed by the National Aeronautics and Space Administration after his separation from his employment with the Navy and would have been entitled to a transfer of any unused sick leave.

We are, of course, aware of the general rule that sick leave once properly charged may not be recredited through a substitution for annual leave which would otherwise be forfeited as being in excess of the maximum carry over permitted, 31 Comp. Gen. 524 (1952). However, an employee may use annual leave in lieu of sick leave in order to avoid forfeiture of annual leave and to conserve his sick leave. Retroactive changes in leave charges have been permitted when through no fault of the employee the agency failed to take action to charge annual instead of sick leave for the above purpose. B-1/6093, July 10, 1972, copy enclosed.

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In Mr. Wade's case, although shore leave rather than annual leave is involved, it appears that the employee was not certain of the amount of leave available to him during the period of his leave prior to separation. It also appears that the Navy did not have accurate records of such leave at the time it was taken and adjusted Mr. Wade's pay almost 2 months after he was separated based upon receipt of information with respect to his actual sick leave balance.

In connection with the adjustments made it seems that the administrative officials involved should have taken into consideration the Civil Service regulations with respect to shore leave making sure that such leave was not forfeited unless the employee, being aware of all the facts and the law and regulations involved, desired such a result. See especially 5 CFR 630.704 (e) and (f).

Under the circumstances related above we see no objection to the substitution of the 2 days of shore leave for an equal amount of sick leave and the transfer of such sick leave to the National Aeronautics and Space Administration. Accordingly the matter is referred for your consideration.

Mr. Wade is being furnished a copy of this letter.

Sincerely yours,

Paul G. Dembing

Acting Comptroller General
of the United States