



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

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SEP 27 1973

B-179444

Mr. Daniel J. Costanzo  
Authorized Certifying Officer  
Department of the Treasury  
United States Mint  
Philadelphia, Pennsylvania 19106

Dear Mr. Costanzo:

We refer to your letter of August 6, 1973, concerning the entitlement of Mr. Joe Boozar to pay for military leave during the period July 11 to 27, 1973.

You say that in early July 1973, Mr. Boozar submitted an annual leave pass (S.F. 71) for July 6, 9 and 10, which was converted to leave without pay since he had used all of the annual leave to his credit for the entire calendar year 1973. Mr. Boozar also submitted a leave pass for military leave from July 11 to 27, 1973, a period of 17 days. You say further, that Mr. Boozar was to report for work at 7:30 a.m. on July 30, 1973 (the next working day after his return from military duty). However, he did not report for duty until 9:25 a.m. on July 30, 1973, thus, placing him in a non-pay status immediately before and after his military duty.

You question whether Mr. Boozar is entitled to payment for military leave since he was in a non-pay status immediately before and after his military duty.

Section 6323 of title 5, U.S. Code, provides that a Government employee is entitled to leave without loss in pay for each day, not in excess of 15 days in a calendar year, in which he is on active duty as a reserve of the armed forces.

It is to be noted that Mr. Boozar would not be entitled to military leave for the entire period of his absence on military duty since by statute his military leave is limited to 15 days. Thus, inasmuch as he had no annual leave to his credit, the two additional days of military duty would of necessity be charged to leave without pay. See 47 Comp. Gen. 761 (1968).

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In 37 Comp. Gen. 608 (1958) we stated in regard to the granting of military leave to a reservist:

"We have held in individual cases that a pay status either immediately prior to the beginning of military duty (11 Comp. Gen. 459) or a return to a pay status immediately afterwards (29 Comp. Gen. 269; 32 id. 204) is a requisite to entitlement to military leave with pay since, otherwise, no civilian pay would have been lost (see also 12 Comp. Gen. 241 and 17 id. 174). Those decisions should not be construed, however, as laying down a firm rule that a leave-without-pay status immediately prior to or immediately after active military duty would in all circumstances preclude payment for military leave. \* \* \*

" \* \* \* The test of whether an employee may be granted military leave should not be merely his leave or pay status immediately prior to or after military duty without regard to other facts. Rather, the test should be whether, but for the active duty, the employee would have been in a civilian pay status (17 Comp. Gen. 174)."

It would appear that Mr. Booser but for the requirement to perform military duty would have been in a civilian pay status during the first fifteen days of his period of military duty. B-165953, June 18, 1969 (copy enclosed). Moreover, upon his return from military duty he performed official duties in his regular civilian position for a portion of the day and thus could be considered as being in a civilian pay status upon his return from military duty.

Accordingly, Mr. Booser may receive payment for 15 days of military leave based on his military duty during the period July 11 to 27, 1973.

In the future any request for decision concerning the propriety of certifying a voucher for payment should be accompanied by the voucher. See 26 Comp. Gen. 797 (1947), at page 799.

Sincerely yours,

Paul G. Donbling

Acting Comptroller General  
of the United States