

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

58598

FILE: **B-182015**DATE: **FEB 28 1975** 95291MATTER OF: **Charles J. Guenther - Administrative leave****DIGEST:**

The denial of administrative leave to an employee for time spent in fighting a local fire outside of the Government installation was a proper exercise of administrative authority since the Civil Service Commission has not issued general regulations covering the granting of administrative leave, and therefore, each agency has the responsibility for determining the situations in which excusing employees from work without charge to leave is appropriate.

This action is a request by the Acting Chief Counsel of the Federal Aviation Administration (FAA), Department of Transportation for a decision as to whether it is within FAA's authority to grant excused absence without charge to annual leave or loss of pay, to an employee while he is engaged in fire fighting or other rescue activities as a member or officer of a volunteer fire department in whose area the Federal facility employing him is located.

As a general rule, we render formal decisions only to heads of Departments and agencies, disbursing and certifying officers and to claimants who have filed monetary claims with our Office. See 31 U.S.C. 74 and 32d. However, in view of the fact that the problems involved in the instant situation will be of a recurring nature, we are treating the request as if it had been submitted by the Secretary of Transportation under the broad authority provided in 31 U.S.C. 74.

Mr. Guenther an employee of the National Aviation Facilities Experimental Center (NAFEC), located in Atlantic County, New Jersey, in the Townships of Egg Harbor, Galloway and Hamilton, is a member of the all volunteer township fire department and since January 1, 1970, the elected fire chief. In such capacity Mr. Guenther became involved in fighting a house fire in the area of one of the volunteer fire companies, which necessitated the absence of Mr. Guenther from duty at the NAFEC for a period of 8 hours. On return to duty Mr. Guenther applied for administrative leave, pursuant to the provisions of FAA regulations published in paragraph 71, Order 3600.4, Section J, entitled Emergency Rescue or Protective Work. This regulation provides that eligible employees who can be spared without interference with essential

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agency operations and obligations may be authorized excused absence to participate in emergency rescue or protective work during an emergency such as fire, flood, or search operations. However, Mr. Cuenther's application for administrative leave was denied by the supervisor and section chief. The FAA states that the NAFEC has entered into reciprocal firefighting agreements with the local firefighting companies pursuant to the provisions of the Act of May 27, 1955, 69 Stat. 66, 42 U.S.C. 1856. However, the agency fire department was not called upon to participate in fighting the fire in question pursuant to the reciprocal firefighting agreement. The duties of Mr. Cuenther in NAFEC have no connection with firefighting, and no conflict of interest problems have arisen from his outside firefighting activity. The FAA estimates that Mr. Cuenther's average annual absence required by his emergency duties as fire chief amounts to 20 hours.

The question, therefore, is whether an employee who is not a member of the agency's firefighting department should be granted administrative leave for the purpose of fighting a fire in the surrounding community pursuant to activities as a member of the community fire department.

Regulations on the subject of granting excused absence to employees without charge to leave (commonly called administrative leave), applicable only to daily, hourly and piece work employees, e.g. wage board employees, which were issued by the Civil Service Commission under the authority of 5 U.S.C. 6104 are contained in 5 C.F.R. 610.301 et seq. Section 610.305 of this regulation provides in part as follows:

"An administrative order may be issued under this subpart when:

* * * * *

"(c) it is in the public interest to relieve employees from work to participate in civil activities which the Government is interested in encouraging."

Apart from these provisions, the Civil Service Commission has issued no general regulations on the subject of granting excused absence to employees without charge to leave. However, this matter is discussed in FPM Supplement 990-2, Book 630, Subchapter S11 and under administrative practice and decisions of the General Accounting Office, similar standards are applied to salaried (General Schedules) employees.

Paragraph (a) of subchapter S11-5 of Book 630, FPM Supplement 990-2, entitled "ADMINISTRATIVE DISCRETION," contains the following general instructions with regard to the type of absence in question:

"With few exceptions, agencies determine administratively situations in which they will excuse employees from duty without charge to leave and may by administrative regulation place any limitations or restrictions they feel are needed. * * *"

Thus, in the absence of statute, an agency may excuse an employee for brief periods of time without charge of leave or loss of pay at the discretion of the agency.

This discretion was limited by a decision of the Comptroller General in 44 Comp. Gen. 643 (1965), to excusing absences without charge to leave or loss of pay when such absence was in connection with furthering a function of the agency. In 32 Comp. Gen. 91 (1952), the Comptroller General found that there was no legal authority for a federal facility to expend appropriated funds for the purpose of firefighting in civilian communities outside of Federal reservations unless federal property was endangered by such fires.

To remedy this situation Congress enacted the Act of May 27, 1955, 69 Stat. 66, et seq., 42 U.S.C. 1856 et seq., by which agency and department heads under regulations prescribed by the head of the agency are authorized to enter into mutual aid fire-protection agreements with firefighting units engaged in fire-fighting activities near Federal installations or activities, and in the absence of any agreement, are authorized to render emergency assistance in extinguishing fires and preserving the life and property from fires within the vicinity of any place at which such agency maintains fire protection facilities. This act merely authorizes firefighting units of a Government installation that have entered into mutual aid agreement to assist local firefighters in fighting local fires. However, in the case at hand the Government installation's firefighting unit was not called upon to assist in fighting the local fire and furthermore, even if the Government installation had been requested to assist in fighting the local fire, the employee involved would not have been affected since he was not employed in the capacity of a firefighter at NAFEC.

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Since the scope of authority for the granting of time off without charge to leave in circumstances similar to those in this case is not clearly defined in law and regulations and since the granting of administrative leave is within the discretion of the agency, the General Accounting Office will not question the denial of such leave. See 53 Comp. Gen. 582 (1974).

R.F. KELLER

Comptroller General
of the United States