

# DECISION



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

FILE: B-183551

DATE:

NOV 28 1974

MATTER OF:

Sylvia Swartz-Change of Retirement Date to  
Grant Unused sick leave.

DIGEST:

Claimant became ill shortly before her separation and discontinued service retirement for refusal to accompany position incident to transfer of function. Later her retirement was changed to disability retirement. Although claimant alleges she was erroneously advised as to her options, she may not be restored to the rolls for the purpose of taking unused sick leave since leave was included in the computation of her annuity and, therefore, may not be restored. Also, record indicates claimant applied voluntarily for discontinued service retirement for personal reasons.

This decision concerns the claim of Miss Sylvia Swartz for 273 hours of unused sick leave accrued prior to her retirement from the Army Electronics Command (Command). Because of her unit's pending transfer of function from Philadelphia, Pennsylvania, to Fort Monmouth, New Jersey, Miss Swartz on May 31, 1973, was offered a position at Fort Monmouth identical to the one she occupied in Philadelphia. She declined this offer of reassignment and by letter of December 12, 1973, she was informed that in view of her rejection of the job offer the Command proposed to separate her on March 1, 1974. On February 4, 1974, Miss Swartz entered the hospital for a serious operation. She left the hospital on February 27, 1974, and pursuant to her request of February 21, 1974, of which there is no written record, was granted sick leave until her separation which was extended to March 14, 1974.

Miss Swartz states that her doctor advised her not to return to work because of her physical condition. Accordingly, after she had recovered sufficiently from her operation, she went to the personnel office to fill out disability retirement papers on March 12, 1974. She states that at that time she was erroneously informed that the personnel office could not process her disability retirement because of its impending transfer to Fort Monmouth, and was advised to go on involuntary retirement and apply for disability within a year. Miss Swartz followed this course of action. She states that as of March 14, the date of her separation, she still had outstanding 273 hours of

sick leave. In view of the alleged erroneous information given to her she requests the decision of our Office as to whether she may be restored to the employee rolls for the purpose of exhausting her sick leave account.

Civil Service regulations provide that sick leave used in the computation of an annuity for an employee shall be charged against his sick leave account and may not thereafter be used, transferred, or reccredited. 5 C.F.R. § 630.407 (1974). We have been informally advised by the Civil Service Commission that Miss Swartz received an annuity pursuant to her involuntary retirement. On December 3, 1974, she applied for an annuity based on disability, and received notice on February 27, 1975, that her application had been approved. As noted above, on the date of her retirement Miss Swartz had 273 hours of accrued sick leave which were included when computing her length of service for annuity purposes. However, because her accrued sick leave was used to compute her annuity, it may not now be reccredited to her account for use even if her separation date were changed. Cf. B-180436, February 13, 1975, and B-181500, April 2, 1975.

There is also for consideration the general rule that once a separation is validly effected, the separation date may not be changed to allow the use of sick leave, unless the intent of the parties was not carried out or unless administrative error was present. B-172375, May 17, 1971 and cases cited therein. In the instant case the Command report states that the Philadelphia Civilian Personnel Office was not staffed after March 24, 1974. However, all functions of that office, including files, records, and pending personnel actions, were transferred to the Fort Monmouth Civilian Personnel Office. Also, 25 cases of pending disability retirement were transferred to Fort Monmouth. Although there is at present nobody on the staff of the Fort Monmouth Civilian Personnel Office who has personal knowledge of Miss Swartz's case, it is the opinion of the administrative office that her resignation and subsequent application for discontinued service retirement were made voluntarily and for reasons personal to her. Since Miss Swartz has not presented any evidence to overcome the administrative report regarding her separation, we must accept the administrative version of the case.

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In view of the above we find no basis for the restoration of Miss Swartz to the rolls for the purpose of taking the unexpired sick leave to her credit at the time of her resignation and application for involuntary retirement.

Repl. G. Dornier

Comptroller General  
of the United States