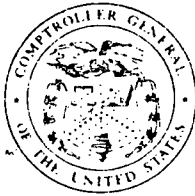


DECISION

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

FILE: B-183813

DATE: JUN 20 1975

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MATTER OF: Julia M. McCarthy and others - Leave accrual,
holiday pay - WAE appointment

DIGEST: Employees were appointed on a when actually employed basis. In fact, they worked regularly scheduled tours of duty of 80 hours each pay period during the period of employment. Therefore, the employees are entitled to annual and sick leave accrual and pay for holidays that occurred during their tours of duty.

An authorized certifying officer of the Department of Housing and Urban Development has requested an advance decision as to whether holiday pay and leave accruals for 1972, 1973, and 1974 may now be certified for Julia M. McCarthy and other former agency employees who were not authorized such benefits when employed under temporary WAE (when actually employed) appointments.

The agency states that Ms. McCarthy received a temporary WAE appointment on February 22, 1972, not to exceed June 15, 1972. The appointment was successively extended to August 22, 1973. Ms. McCarthy resigned on March 16, 1973. It is stated that other employees were similarly situated.

The local Personnel Officer issued corrective personnel actions to show the appointment for each employee to be temporary in nature rather than intermittent since he states the original actions were in error. The Personnel Officer states each employee worked a regularly scheduled tour of duty, that is, 80 hours each pay period. He requested that the record of each employee be audited and that each be credited with annual and sick leave that should have accrued and that they be paid any pay due for holidays occurring during the employment period.

The headquarters office of General and Program Accounting denied the request stating that the former employees appeared to have been paid during the term of their employment in accordance with the terms and conditions of their appointments and the documentation of record as of the time of employment.

The record indicates that in response to an employee grievance action on the matter, the local Area Director in effect recommended the same remedy requested by the local Personnel Officer, i.e., (1) personnel actions to be issued showing the appointments to be full-time temporary, (2) holiday pay to be given for those days on which it had been denied because employee was listed as intermittent, and (3) annual and sick leave to be credited in appropriate amounts.

The agency grievance documentation refers to the definitions in the Federal Personnel Manual, Chapter 291, Appendix B, in pertinent part as follows:

"(5) Full-time employees means those regularly scheduled to work the number of hours and days required by the administrative workweek for their employment group or class. (Most full-time employees have an administrative workweek of five days of eight hours each. Others have administrative workweeks of different hours.)

"(6) Part-time employees means those regularly employed on a prescheduled tour of duty which is less than the specified hours or days of work for full-time employees in the same group or class.

"(7) Intermittent employees means those employed with no prescheduled tour of duty (i.e., usually on an irregular or occasional basis). Such employees are paid only for the time actually worked or for service actually rendered."

We have held that the wording of an employee's appointment does not necessarily determine his right to sick and annual leave if his actual service differs from that indicated in the appointment. 16 Comp. Gen. 442 (1936), 18 Comp. Gen. 457 (1938). Since the employees in the instant case in fact worked regularly scheduled tours of duty of 80 hours each pay period, such duty is regarded as a regular tour of duty for leave purposes.

With regard to entitlement to annual and sick leave, 5 U.S.C. §§ 6303 and 6307 (1970), provide that an employee is entitled to annual and sick leave with pay. Section 6302(a) states that the days of leave provided are days on which an employee would otherwise work and receive pay and are exclusive of holidays and

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non-workdays established by Federal statute, Executive order, or administrative order. Section 6302(b) states that for purposes of the chapter on annual and sick leave, an employee is deemed employed for a full biweekly pay period if he is employed during the days within that period, exclusive of holidays and non-workdays established by Federal statute, Executive order or administrative order which fall within his basic administrative workweek.

Accordingly, the question raised by the agency is answered in the affirmative.

R.F. KELLER

Deputy Comptroller General
of the United States