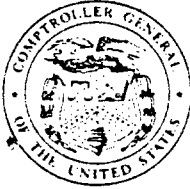


DECISION

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

FILE: B-186197

DATE: JUL 28 1976 98800

MATTER OF:

Claudia M. Ferguson - Recredit of Sick and Annual Leave

DIGEST:

Because of change in workload, day-shift employees of one shipyard shop, were to be "loaned" to another shop for night-shift work, on board ship. Claimant presented medical certificate from her personal physician, stating that she should not be assigned night work or duties involving climbing. Agency placed claimant on sick and annual leave until both were exhausted. Claim for recredit of leave is denied, because agency may involuntarily place employee on leave when employee is incapacitated for the performance of assigned duties.

This matter arises from a request for reconsideration of Settlement Certificate Z-2584033, issued January 30, 1976, by our Claims Division, disallowing Mrs. Claudia M. Ferguson's claim for recredit of sick and annual leave.

In July 1974, Mrs. Ferguson was an employee of the Norfolk Naval Shipyard, assigned to day-shift work in Electronics Shop 67. In late July, because of a decrease in workload for Shop 67 and an increase in work for Electrical Shop 51, employees from Shop 67, including Mrs. Ferguson, were to be "loaned" to Shop 51. The work to be done in Shop 51 was to be night-shift work, aboard ship, requiring a significant amount of climbing. On or about July 17, 1974, Mrs. Ferguson requested leave without pay (LWOP) for the period August 1, to September 1, 1974. Because of the continuing workload for Shop 67 employees, even though the work was to be performed in Shop 51, Mrs. Ferguson's request was denied.

Following the disapproval of her request for LWOP, Mrs. Ferguson presented a medical certificate from her personal physician to the effect that she should not work nights, and that she should avoid climbing. These restrictions are found in a "Medical Evaluation of Work Status" form, signed by Dr. Bernard H. Miller, apparently on July 23, 1974, and they precluded Mrs. Ferguson from performing the work to be assigned when she was "loaned" to Shop 51. According to the record before us, attempts were made to find work which Mrs. Ferguson could perform within her physical restrictions, but none was available until August 20, 1974.

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Because of her physician's certificate and the lack of other suitable work, Mrs. Ferguson was placed on sick leave on July 22, 1974, until it was exhausted on July 25, 1974. She was then placed on annual leave until it ran out on August 8, 1974, when she was placed on LWOP until she returned to work on August 20, 1974. Mrs. Ferguson sought recredit of her sick and annual leave from the Navy and the Civil Service Commission before coming to this Office.

In appealing the disallowance of her claim, Mrs. Ferguson's major complaint seems to be that she should not have been placed on sick leave because she was not sick. However, it is appropriate to grant sick leave or to place a person on sick leave when they are physically incapable of performing their assigned duties. See 5 CFR § 630.401(b) (1976). In the instant case, Mrs. Ferguson's personal physician certified that she should not perform any duties that involved climbing or working at night. The only duties then available to which Mrs. Ferguson could be assigned were at night and involved climbing. There is nothing in the record to suggest that the officials of the Norfolk Naval Shipyard exercised less than their best efforts to locate other more suitable work for Mrs. Ferguson. In fact, she was assigned to work compatible with her medical restrictions when such work became available.

The general rule is that an employee may be involuntarily placed on sick leave when the cognizant officials determine, based upon competent medical evidence, that the employee is incapacitated for the performance of his assigned duties. B-181313, February 7, 1975. We have also held that the charging of annual leave to an employee is primarily a matter for agency determination. B-186095, April 26, 1976. In the instant case the shipyard officials accepted the statement of Mrs. Ferguson's personal physician that she should perform neither night-shift work nor work involving climbing. We see no abuse of discretion in placing Mrs. Ferguson on sick leave and annual leave.

Accordingly, on the present record, the disallowance of Mrs. Ferguson's claim for recredit of her annual and sick leave is sustained.

R.F. KELLER

[Deputy] Comptroller General
of the United States