



COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

B-187755

DEC 23 1976

The Honorable Delbert L. Latta
House of Representatives

Dear Mr. Latta:

Further reference is made to your letter dated November 1, 1976, with enclosures, regarding your constituent, Mr. _____, who claims to have been improperly denied accrued annual and sick leave as an employee of the U.S. Postal Service because he was charged leave without pay incident to military training as an Air Force Reservist.

The enclosures submitted with Mr. _____'s letter indicate that in 1972, 1973, and 1976, he served on active duty more than 15 days and that the Postal Service charged him leave without pay for the excess days. Also, as a result of the leave-without-pay charges, his accumulation of annual and sick leave was reduced. Mr. _____ believes that the Postal Service's actions violate the provisions of chapter 43, title 38, United States Code.

The Postal Service has claim settlement authority under 39 U.S.C. § 401(8) (1970). That section provides:

"401. General Powers of the Postal Service

"The Postal Service shall have the following general powers:

* * * * *

"(8) To settle and compromise claims by or against it:"

Moreover, 39 U.S.C. § 2008(c) (1970) provides:

"(c) Subject only to the provisions of this chapter, the Postal Service is authorized to make such expenditures and to enter into such contracts, agreements, and arrangements, upon such terms and

conditions and in such manner as it deems necessary, including the final settlement of all claims and litigation by or against the Postal Service."

In view of the broad authority conferred on the Postal Service by the above-quoted statutes, we have no jurisdiction in the matter. However, although the claim of your constituent for restoration of leave is for adjudication by the Postal Service, we shall advise you, in general, of the statutes and regulations involved as follows.

Section 1005(f), title 39, United States Code (1970), provides that compensation, benefits, and other terms and conditions of employment in effect prior to the effective date specified in the Postal Reorganization Act shall continue to apply until they are changed by the Postal Service. We understand that the Postal Service has continued generally to use the leave system applicable to the employees of the executive agencies.

Chapter 43, title 38, United States Code (Supp. V, 1975), provides reemployment rights to persons inducted into the Armed Forces of the United States under the Military Selective Service Act and similar acts. Since Mr. _____ is a Federal employee and a Reservist, it appears that the provisions of title 5 of the United States are those properly applicable. Sections 502 and 5534 of title 5 provide that a Reservist may be employed in a civilian capacity by the Federal Government and receive the pay of his civilian office or position in addition to pay and allowances as a Reservist. Section 6323 of title 5 provides for the leave entitlement of Federal employees while they are on military duty. That section provides in pertinent part as follows:

"§ 6323. Military leave; Reserves and National Guardsmen

"(a) An employee as defined by section 2105 of this title or an individual employed by the government of the District of Columbia, permanent or temporary indefinite, is entitled to leave without loss in pay, time, or performance or efficiency rating

for each day, not in excess of 15 days in a calendar year, in which he is on active duty or is engaged in field or coast defense training under sections 502-505 of title 32 as a Reserve of the armed forces or member of the National Guard.

* * * * *

"(c) Except as provided by section 5519 of this title, an employee as defined by section 2105 of this title or an individual employed by the government of the District of Columbia, permanent or temporary indefinite, who—

"(1) is a member of a Reserve component of the Armed Forces, as described in section 261 of title 10, or the National Guard, as described in section 101 of title 32; and

"(2) performs, for the purpose of providing military aid to enforce the law—

"(A) Federal service under section 331, 332, 333, 3500, or 8500 of title 10, or other provision of law, as applicable, or

"(B) full-time military service for his State, the District of Columbia, the Commonwealth of

Puerto Rico, the
Canal Zone, or a
territory of the
United States;

is entitled, during and because of such service, to leave without loss of, or reduction in, pay, leave to which he otherwise is entitled, credit for time or service, or performance or efficiency rating. Leave granted by this subsection shall not exceed 22 work-days in a calendar year."

In 37 Comp. Gen. 255 (1957) it was held that a Federal employee was entitled only to 15 days of military leave a year under the provisions of 5 U.S.C. § 30r, now codified in 5 U.S.C. § 6323(a). After the expiration of the 15 days, the Reservist could be granted annual leave. Also, should the employee exhaust his annual leave, he was then to be placed on leave without pay or military furlough at the option of the employing agency. In decision B-134171, September 23, 1970, it was held that a Federal employee could be granted leave with pay under the provisions of 5 U.S.C. § 6323(c) for only a maximum of 22 days in a calendar year. Further, when a full-time employee is on leave without pay, Civil Service Commission regulations provide that when the number of hours in a nonpay status in a full-time employee's leave year equals the number of base pay hours in a pay period, his agency shall reduce his credits for leave by an amount equal to the amount of leave the employee earns during the pay period. 5 C.F.R. § 630.208(a) (1976). In view of the law and regulations cited herein, it appears that Mr. [redacted] is not entitled to a recredit of leave.

We hope that the above is of assistance to you in replying to your constituent.

Sincerely yours,

R.F. KELLER

 Comptroller General
of the United States