

5118

Haubert
C.P.

DECISION



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

FILE: B-190374

DATE: January 20, 1978

MATTER OF: Aurora D. Rives - Terminal leave

DIGEST: Employee took total accrued annual leave (6 hours) in final 6 hours of last day of employment before separation. Since employee substantially worked the entire final pay period and worked part of last day of that period, the rule regarding terminal leave does not apply. Thus, employee could properly accrue and use leave during last day of employment.

By a letter dated October 5, 1977, Ms. Donna D. Beecher, Director of the Personnel Systems and Payroll Division, Department of Housing and Urban Development (HUD), requested our decision whether a former HUD employee, Ms. Aurora D. Rives, could properly take annual leave on the last day of her employment.

The record indicates that at the beginning of her last pay period of employment with HUD, Ms. Rives had a balance of 4 hours sick leave and no annual leave. Her time card for that period indicated that she took 8 hours of sick leave in the middle of the pay period and 6 hours of annual leave for the last 3 hours of Friday, March 25, 1977, which was her last day of employment. The employing agency knew for at least 1 week prior to March 25, that Ms. Rives would separate from employment on that date.

Noting that Ms. Rives used the balance of her annual leave immediately before separation, the agency questions whether such action constituted an impermissible taking of terminal leave. In addition, if the action is considered terminal leave, the agency questions whether the employee in fact ever accrued such leave for failure to work a full biweekly pay period.

It has long been the position of this Office that administrative authority to grant an employee terminal leave immediately prior to separation from the service, when it is known in advance that the employee is to be separated, is limited to cases where the exigencies of the service require such action. 54 Comp. Gen. 655, 658 (1975). In this connection, an exception to the terminal leave rule had been

B-190374

previously made to permit the use of annual leave prior to separation that would otherwise be forfeited because it would not be included in a lump-sum payment. However, this exception is no longer necessary since Public Law 93-181 amended 5 U.S.C. 5551(a) and removed entirely the limitation on the number of hours of accumulated annual leave for which an employee may receive a lump-sum payment upon separation. 53 Comp. Gen. 820 (1974).

As indicated in 24 Comp. Gen. 511 (1945), our position regarding terminal leave is based upon the provisions of Public Law 78-525, which provided for lump-sum payments for accrued leave. Thus we stated:

"The evident purpose of the statute is to require payment in a lump sum, rather than in periodic payments over a number of pay periods for all accrued annual or vacation leave which had not been taken by an employee prior to the acceptance of his resignation or other terminating action. The legislation appears to have been predicated upon the definite representation that employees would be separated from the service effective upon completion of the last day of active duty. In that connection, there is for noting the following statement appearing in House of Representatives Report No. 1836 and in Senate Report No. 1300, on H.R. 4918 which became the act here involved:

"This bill would provide many benefits such as elimination of the problem of dual compensation; stop service credit on the last day of active duty; permit immediate recruitment of a successor to a separated employee; would make funds available to employees leaving the service after the war, enabling them to return to their homes or reestablish themselves in other employment; would simplify and expedite clearance of records in closing out field installations; would eliminate considerable paper work for pay-roll sections, and would save expenses to the Government."

B-190374

Where, as here, an employee has worked during almost the entire final pay period and has worked a portion of the last day of that period, none of the benefits associated with the making of lump-sum payments appear to accrue to the Government. The rules governing terminal leave, therefore, do not apply where an employee takes annual leave in the final hours of the last day of employment, which is the last working day of a pay period, after having substantially worked the entire pay period containing that day.

Accordingly, we conclude that Ms. Rives did accrue the requisite number of hours of sick and annual leave, and that she could properly use the accrued 6 hours of annual leave on the last day of her employment. Action on this matter should be taken by the agency in accordance with the foregoing.

Paul S. Stumbling
For The Comptroller General
of the United States