

DIGEST - L - Nil

DECISION



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

708

FILE: B-191053

DATE: June 16, 1978

MATTER OF:

DIGEST: 1. The rules governing leave entitlements for members of the armed forces do not generally apply to commissioned officers of the Public Health Service, who are subject to separate and distinct laws and regulations concerning leave.

2. Public Health Service officer, who departed his permanent duty station on a Wednesday in a leave status and returned to a duty status 5 days later on the following Monday, is entitled to have only 3 days charged to his annual leave account, since he was not scheduled to perform duty on Saturday or Sunday, and regulations applicable to members of the Commissioned Corps of the Public Health Service provide that nonwork-days immediately following a period of leave are not chargeable to annual leave.

This action is in response to correspondence dated December 30, 1977, from Mr. John H. Adams, Certifying Officer, United States Environmental Protection Agency, Region VII, Kansas City, Missouri, requesting a decision as to whether the annual leave account of

, a commissioned officer, Director Grade, of the Public Health Service (PHS) assigned to duty with the Environmental Protection Agency, may be charged for a 2-day weekend period when he was away from his duty station immediately following a period of authorized annual leave.

departed his permanent duty station, Kansas City, Missouri, on Wednesday, October 5, 1977, in an annual leave status, and traveled to Alexandria, Minnesota. He remained on leave at Alexandria for a period of 5 days ending on Monday, October 10, 1977, when he went to Rochester, Minnesota, for the purpose of performing a temporary duty assignment involving a radiation control program. He returned to his permanent duty station at Kansas City on October 14, 1977. In the submitted travel voucher and the PHS Form 1345 ("Request for Authority for Leave of Absence") it is indicated that he secured advance approval to have only 3 days of the 5-day leave.

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period charged to his annual leave account, with the weekend period of October 8 and 9, 1977, to be treated as nonchargeable "station" leave.

In the submission the propriety of this leave transaction is questioned. In substance, it is noted that military personnel are generally liable to have their leave accounts charged for every day that they are away from their duty stations in a leave status, including weekends and holidays. The question is therefore raised as to whether the rules governing leave for members of the armed forces are applicable to commissioned officers of the PHS. A question is also raised as to the propriety of authorizing PHS officers to take nonchargeable "station" leave on weekends when they travel beyond commuting distance of their duty stations and are not readily available for duty. Further, on this point but not related specifically to the case of , a question is raised as to the propriety of allowing a PHS officer to use "station" leave on a weekend at a leave point outside of the commuting area with prior approved annual leave beginning the following Monday.

Provisions of law governing the administration of the PHS are contained in the Public Health Service Act, July 1, 1944, ch. 373, 58 Stat. 682, as amended, chapter 6A of title 42, United States Code (1970). With respect to the leave entitlements of PHS officers, section 219 of that act as added by the act of August 9, 1950, ch. 654, 64 Stat. 426, 42 U.S.C. 210-1(a)(1970) provides as follows:

"In accordance with regulations of the President, commissioned officers of the Regular Corps and officers of the Reserve Corps on active duty may be granted annual leave and sick leave without any deductions from their pay and allowances: Provided, That such regulations shall not authorize annual leave to be accumulated in excess of sixty days."

The authority of the President to issue regulations as provided therein was delegated to the Secretary of Health, Education and Welfare by section 1(f) of Executive Order No. 11140, January 30, 1964.

Implementing regulatory provisions of subsection 21.81(f) of title 42, Code of Federal Regulations (1976), define "station" leave for PHS officers as follows:

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"(f) 'Station leave' means authorized absence from duty and station on non-work days, off-work hours, or for a period of less than one work day." (Underscoring supplied.)

With respect to a PHS officer's entitlement to "station" leave, 42 C.F.R. 21.88 provides in pertinent part that:

"During off-work hours and on non-work days, during which an officer has no scheduled working hours he shall be entitled to station leave unless the officer in charge otherwise directs. * * * Station leave shall not be charged as annual leave."

In addition, 42 C.F.R. 21.87 provides in pertinent part as follows regarding the use of "station" leave immediately before and after periods of annual leave:

"The number of days of annual leave taken shall be computed by counting each work day during the period of leave and all non-work days within each period, but excluding any period of station leave immediately preceding or immediately following such leave * * *"

Thus, under the applicable regulations, a PHS officer is ordinarily entitled to "station" leave any nonworkday that does not fall in the middle of a period of annual leave. There is no requirement that the officer remain within commuting distance of his duty station or otherwise keep himself available for prompt recall to duty on days of "station" leave. Moreover, the regulations specifically provide for the use of "station" leave immediately before and after periods of annual leave. It is, therefore, our view that was properly authorized "station" leave on the weekend of October 8 and 9, 1977, even though these days came immediately after a period of annual leave and he remained at a point distant from his duty station. It is also our view that a PHS officer may properly be allowed to use "station" leave on a weekend at a leave point outside the commuting area of his duty station with prior approved annual leave beginning the following Monday. This presupposes, of course, that October 8 and 9, 1977, were not scheduled workdays for and that in

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the hypothetical situation presented the officer would not be scheduled to perform any duty on the weekend preceding the period of annual leave beginning on Monday.

With respect to the question raised as to whether the rules governing leave for members of the armed forces are applicable to commissioned officers of the PHS, it is to be noted that the provisions of chapter 40, title 10, United States Code (1976), regarding leave for members of the armed forces (see especially 10 U. S. C. 701, 704 (1976)) are applicable specifically to members of the "armed forces." The definition of "armed forces" as contained in 10 U. S. C. 101(4) (1976) applies that term to the Army, Navy, Air Force, Marine Corps and Coast Guard. In that connection it is noted that the term "uniformed services" as defined in 37 U. S. C. 101(3) (1970) is applicable to the PHS as well as the armed forces. Hence, the law and regulations governing leave for members of the armed forces do not apply to commissioned officers of the PHS.

The questions are answered accordingly. The travel voucher, PHS Form 1345 and related documents included with the submission are returned for such further use as may be appropriate.



Acting Comptroller General
of the United States