



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

Mr. Agazarian, PLMT

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OFFICE OF GENERAL COUNSEL

IN REPLY
REFER TO:

B-193559

July 17, 1980

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Mr. Shelley Blum
Litigation Director
North Carolina Labor Law Center DLG 04957
P.O. Box 12493
Raleigh, North Carolina 27605

Dear Mr. Blum:

We refer to your letter dated January 30, 1980, and Mr. Wib Gulley's letter of March 26, 1980, with enclosures, concerning your request for reconsideration of the decision, Matter of William O. Garrison, B-193559, April 27, 1979, in which a Claims Division's settlement disallowing Mr. Garrison's [claim for recredit of sick and annual leave] charged him during the period from August 30, 1976, to November 7, 1976, was sustained.

In that decision, it was held that Mr. Garrison, a painter at the Naval Air Rework Facility, Marine Corps Air Station, Cherry Point, North Carolina, was not entitled to the recredit of involuntary sick and annual leave as an employee may be involuntarily placed on sick leave when the cognizant administrative officials determine, based upon competent medical evidence, that the employee is incapacitated for the performance of his assigned duties. Matter of Claudia M. Ferguson, B-186197, July 28, 1976, and Matter of William J. Heisler, B-181313, February 7, 1975. Copies enclosed.

The administrative report shows that the personnel working in the paint shop are required to wear safety goggles. A medical evaluation of August 26, 1976, concluded that Mr. Garrison was not physically qualified to safely perform his duties because of his eyesight until he was furnished appropriate safety glasses.

The agency states that as there was no suitable position in the Production Department in which Mr. Garrison could be assigned, he was placed on involuntary sick leave beginning August 30, 1976.

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On November 8, 1976, he was returned to duty and detailed to the position of preservation packager pending receipt of new prescription safety glasses which the agency had ordered. Upon receipt of the safety glasses, he was returned to his position as a painter on December 9, 1976. The administrative report was based on the entry dated December 9, 1976, in the Chronological Record of Medical Care of Mr. Garrison that he was in receipt of the safety glasses that had been ordered.

While Mr. Garrison, in his appeal of the Claims Division's settlement stated that there had not been any change in his physical condition and the agency had not provided him with prescription safety glasses, the Comptroller General held that in view of the administrative report and the notation of December 9, 1976, Mr. Garrison's medical record concerning the receipt of such glasses, he had not established his claim that the agency's action in placing him on involuntary leave was improper.

You now submit, in support of Mr. Garrison's claim, an affidavit executed by him wherein he states that although a pair of safety glasses were furnished him in December 1976, no safety glasses have ever been furnished which would allow him to perform his painting work. Furthermore, he states that the safety glasses provided him after his involuntary leave have been similar or identical to those furnished before the period of involuntary leave. In addition, you have submitted affidavits by two of his co-workers which essentially contain similar statements concerning the safety glasses furnished him. Lastly, you have submitted a statement by an Optometrist dated February 2, 1980, that there is no effective difference in the two pair of glasses noted on the prescription form. You state that one of the pair of glasses involved were those used by Mr. Garrison prior to September 1976, and the other pair were the glasses furnished him in December 1976.

As stated in the decision of April 27, 1979, cases involving claims against the Government are decided on the basis of the written record. The claimant has the burden of proof of establishing the liability of the

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United States and the claimant's right to payment.
4 C.F.R. 31.7.

Here the agency determined on the basis of competent medical advise that Mr. Garrison could not safely perform his duties without a new pair of safety glasses. After periods of leave and temporary assignment the new glasses were received and he was returned to his former duties. The Comptroller General is not in a position to determine whether or not the original medical advice was in fact correct. Neither can he decide whether or not the remedial action taken was sufficient to remedy the difficulty. A medical determination was made that Mr. Garrison should not work at his job without new safety glasses and the agency reasonably placed him on sick leave in the absence of an available alternative assignment. As indicated in Heisler, above, action take on the basis of competent medical advice will not be subject to reversal even though it turns out that this medical advice was in error.

We note that there are no other administrative appeals open to Mr. Garrison. See 31 U.S.C. § 74 (1976). However, he may file suit in the United States District Court under 28 U.S.C. § 1346(a)(2) if the amount of his claim is less than \$10,000 or in the Court of Claims under 28 U.S.C. § 1491, no matter what the amount of the claim.

Sincerely yours,



Edwin J. Monsma
Assistant General Counsel

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