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DECISION

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

10,947

FILE: B-195042 [Request For **DATE:** August 6, 1979

MATTER OF: William Stuart - Approval of Sick Leave]

DIGEST: Employee, who was present at delivery of his child in accordance with Lamaze method of prepared childbirth, claims sick leave should be substituted for annual leave granted by agency. Sick leave is appropriate only when circumstances specifically meet the criteria contained in the regulations. Employee's claim for substitution of sick leave for annual leave is disallowed since he did not undergo medical treatment and he was not incapacitated for duty as required by regulations. See 5 C.F.R. § 630.401.

Is an employee entitled to sick leave when he is absent from duty to be present with his wife during labor and delivery under the Lamaze method of prepared childbirth?

Counsel for the National Treasury Employees Union (NTEU) CWG 00058 has requested a decision on behalf of Mr. William Stuart, an employee of the Internal Revenue Service's (IRS) Brookhaven DLG 02530 Service Center, Holtsville, New York. Mr. Stuart claims that he should have been granted sick leave by IRS rather than annual leave under the circumstances stated below.

Mr. Stuart requested sick leave in advance on March 23, 1979, pursuant to Civil Service Commission (now Office of Person- DLG00923 nel Management) regulations in title 5 of the Code of Federal Regulations, section 630.402 (1978). The request stated that his wife was expecting a child and that they would "be using the Lamaze method of prepared childbirth, in which the husband takes an active part in the birth process acting as a coach to the mother." Since his presence was required during labor and delivery, he requested sick leave for that period. The request was supported by a doctor's certificate which stated that Mr. Stuart "will coach [his wife] through labor and delivery and [he] must be present for the entire process."

Mr. Stuart's request for advance approval of sick leave was denied by the IRS' Brookhaven Service Center on the ground that

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sick leave may only be used if the employee himself is ill or undergoing medical treatment. Mr. Stuart's subsequent grievance was rejected by IRS on April 18, 1979, since the use of sick leave would contravene the Federal Personnel Manual. On April 30, 1979, Mr. Stuart's wife gave birth to a child and the Lamaze method was used.

The NTEU letter to us on behalf of the claimant refers to 5 C.F.R. § 630.401 (1978) which states in pertinent part:

> "An agency shall grant sick leave to an employee when the employee:
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> "(a) Receives medical, dental, or optical examination or treatment;
>
> "(b) Is incapacitated for the performance of duties by sickness, injury, or pregnancy and confinement * * *."

The NTEU says that the cited regulations do not preclude the granting of sick leave to Mr. Stuart because (1) he was incapacitated to perform his duties due to pregnancy and confinement for which sick leave is allowed under 5 C.F.R. § 630.401(b), and (2) his presence at the birth of his child was part of a "medical treatment" for which sick leave is allowed under 5 C.F.R. § 630.401(a). The union asserts that it is of no moment that he was not carrying the child himself because the Lamaze method recognizes the fact that the father has a continuing and essential role in the birth process itself and the medical treatment is necessary to fulfill the goals of the Lamaze method.

We believe that the result in the present case is controlled by the sick leave regulation as interpreted in Charles T. Turner, B-181686, September 2, 1975, published at 55 Comp. Gen. 183, and that Mr. Stuart's request for sick leave must be disallowed.

In Turner, the employee requested sick leave because he had been up all night with his sick wife and needed rest. He grieved the agency's decision to charge his absence to annual leave. The arbitrator agreed with him on the basis that he had

been incapacitated for duty. Because the Civil Service Commission had the duty under 5 U.S.C. § 6311 to issue regulations on sick leave, we asked the Commission whether the arbitrator's award conflicted with the regulations in 5 C.F.R. § 630.401. The Commission stated that it "has consistently interpreted this regulation to mean that sick leave is appropriate for use only when the circumstances specifically and literally meet the criteria contained in the regulation." Further, the Commission stated that the generous amounts of annual leave granted to Federal employees were authorized by law with the understanding that they were meant for more than vacations, i.e., annual leave was also to be used for a variety of personal and emergency reasons, such as taking a family member to a doctor or a hospital or caring for a family member who is ill. 55 Comp. Gen. 183, at 185. We agreed with the Commission.

In the present case, it is clear that the circumstances of Mr. Stuart's absence from duty do not specifically and literally meet the criteria contained in the regulation. Although his presence at the birth may have been an essential part of the childbirth method used, Mr. Stuart did not receive medical treatment as required by subsection (a) of 5 C.F.R. § 630.401. His wife received the treatment and he was there to assist. We take official notice of the fact that babies are often born without the father being present. Likewise, Mr. Stuart was not incapacitated for duty for any of the reasons listed in subsection (b) of the regulation, namely sickness, injury, or pregnancy and confinement. In fact he was not "incapacitated" at all as shown by his advance request for sick leave. He voluntarily chose to be away from duty to be with his wife and, commendable as this may be, it does not qualify him for sick leave. His situation is essentially no different than the employee who transports his wife or child to a hospital or who cares for a sick wife or child. In both examples the employee is required to use annual leave according to the Civil Service Commission.

The only situations in which the Commission's regulation permits sick leave when the employee himself is not either incapacitated or receiving treatment are described in 5 C.F.R. §§ 630.401(c) and (d). Under those provisions sick leave is

granted if the employee cares for a family member who has a contagious disease or if the employee would jeopardize the health of others because of exposure to contagious disease. We believe that if further reasons for granting sick leave are to be allowed, it will have to be done by amendment to 5 C.F.R. § 630.401, not by decision.

Accordingly, there is no basis upon which to direct substitution of Mr. Stuart's annual leave for sick leave and his claim for such substitution is disallowed.

R. F. Keller

Acting Comptroller General
of the United States