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DECISION



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

[Reimbursement of Travel and Relocation Expenses]

FILE: B-195205

DATE: October 11, 1979

MATTER OF: Leo C. Shelley - relocation expenses - service agreement - creditable service

DIGEST: Agriculture employee agreed to remain in Government service for 12 months after effective date of transfer on June 5, 1977. Employee applied for disability retirement and agency granted him sick leave August 7, 1977, pending outcome of application. After employee exhausted sick and annual leave agency granted him leave without pay. When application and request for reconsideration were denied by Civil Service Commission, agency ordered employee to report for duty on June 2, 1978, or be placed in "absent without leave (AWOL)" status. Employee is not entitled to relocation expenses since he failed to report and AWOL time is not creditable service for purpose of service agreement.

ABC 1435
ABC B37

Mr. H. Larry Jordan, an authorized certifying officer at the National Finance Center, U.S. Department of Agriculture, has requested our decision whether Mr. Leo C. Shelley, a former employee of the Soil Conservation Service, U.S. Department of Agriculture, may be reimbursed for certain travel and relocation expenses in connection with his official change of duty station in June 1977. Our decision is that Mr. Shelley may not be reimbursed because he did not fulfill the 12 months Government service agreement mandated by 5 U.S.C. § 5724(i) (1976).

On May 10, 1977, Mr. Shelley was authorized to change his official station from Coeur d'Alene, Idaho, to Meridian, Idaho. At that time, Mr. Shelley signed a service agreement in which he agreed to remain in Government service for a period of 12 months following the effective date of his transfer, unless he was separated for reasons beyond his control and acceptable to the Soil Conservation Service. The effective date of Mr. Shelley's transfer was June 5, 1977. In a letter dated July 31, 1977, Mr. Shelley announced his intention to apply for disability retirement as soon as possible, and according to the administrative record, he entered a sick leave status on August 7, 1977, pending the outcome of his application for disability retirement.

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Mr. Shelley exhausted his accrued sick and annual leave and he was authorized by the agency to enter a leave without pay status beginning November 28, 1977. The disability retirement request was denied by the Civil Service Commission on April 11, 1978, and the agency requested Mr. Shelley to report back to work. However, when Mr. Shelley stated that he was appealing the adverse determination on his disability retirement application, the agency rescinded this request and authorized an extension of leave without pay for Mr. Shelley through June 1, 1978. In addition, the agency advised Mr. Shelley that it would not grant him any additional period of leave without pay until he provided certain evidence concerning the status of his appeal.

The agency was informed by letter from the Civil Service Commission dated May 23, 1978, that Mr. Shelley's request for reconsideration of the determination on his disability retirement application had been denied. In view of this and since Mr. Shelley had not replied to the request for supporting materials, the agency by letter of May 25, 1978, directed him to report for duty on June 2, 1978. The agency further advised Mr. Shelley that if he failed to report for duty he would be placed in an absent without leave status which would result in the initiation of appropriate adverse action proceedings. Mr. Shelley requested, by letter dated May 26, 1978, an extension of leave without pay from June 1, 1978, to July 1, 1978. The agency denied this request based on the conditions set forth in its May 25, 1978, correspondence, and again ordered Mr. Shelley to report for duty on June 2, 1978, or be placed in an absent without leave status.

Mr. Shelley did not report for duty on June 2, 1978. As a result, by letter dated July 17, 1978, the agency informed Mr. Shelley that it was initiating a proposal for adverse action to remove him from employment for failure to report to duty as directed. Mr. Shelley subsequently responded to this correspondence by resigning his position with the Soil Conservation Service effective August 1, 1978.

Under the provisions of 5 U.S.C. § 5724(i) an agency may pay specified travel and relocation expenses when an employee is transferred within the continental United States only after the employee agrees in writing to remain in the Government service for 12 months after his transfer, unless the employee is separated for reasons beyond his control that are acceptable to the agency concerned. The statute further provides that if the employee violates the service agreement, the money spent by the United States for the expenses and allowances

is recoverable from the employee as a debt due the United States. In the present case, the controlling issue is the computation of creditable service for purposes of fulfilling the mandate provided in 5 U.S.C. § 5724(i) for 12 months of Government service.

The effective date of Mr. Shelley's transfer was June 5, 1977. Thus, to comply with the statutory requirements relating to reimbursement for travel and relocation expenses, Mr. Shelly was required to remain in Government service through June 4, 1978, unless separated under conditions which are not applicable here. The record shows that after periods of authorized sick and annual leave, followed by extended periods of authorized leave without pay, Mr. Shelley refused to report for duty on and after June 2, 1978, and was placed in the status of "absent without leave" until his resignation on August 1, 1978.

✓ The certifying officer sent the agency a copy of our decision B-184948, November 18, 1975. In that decision we evaluated a particular situation where a transferred employee executed a service agreement by which he agreed to remain in the Government service for 12 months subsequent to reporting at his new duty station. After reporting, the employee was granted leave without pay which was later extended, at his request, beyond the expiration of the agreed period of service. Although the employee was thereafter separated for abandoning his position, this Office held that the employee was not liable for repayment of a travel advance to the extent that relocation expenses incurred by him incident to the transfer were proper and payable since time in a leave without pay status is considered Government service within the meaning of 5 U.S.C. § 5724(i). In so holding we adhered to our earlier decision in 45 Comp. Gen. 680 (1966) that an employee on leave without pay remains in the Government service within the meaning of 5 U.S.C. § 5724(i) notwithstanding the reasons which the agency deemed sufficient to justify placing him in that status. Notwithstanding our prior decision the agency felt that the employee breached his agreement and requested our decision whether Mr. Shelley's ✓ voucher is payable.

In view of the reasoning in our prior decisions we conclude that those periods during which Mr. Shelley was in an authorized leave without pay status constituted creditable service toward the fulfillment of his 12 months Government service agreement. However, we do not believe that the period from June 2, 1978, through June 4, 1978, during which Mr. Shelly was absent without leave is creditable Government service for the purpose of complying with the 12 months service agreement.

While Mr. Shelley was "on the rolls" of the Soil Conservation Service on and after June 2, 1978, until his separation, as contemplated by our decision in 45 Comp. Gen. 680, supra, this fact alone is not sufficient to equate being "on the rolls" during a period of unauthorized absence with rendering creditable service within the meaning of 5 U.S.C. § 5724(i). In this connection we note that where an employee is in a leave without pay status he may be said to be creditably serving the agency for certain purposes and to the extent that the agency has authorized the period of leave without pay. However, where an employee absents himself from duty without any authorization, he may not be said to be creditably serving the agency for any purpose during that period of unauthorized absence, unless the absence is later excused in accordance with paragraph 1-6, chapter 630, of the Federal Personnel Manual (FPM), and SI-6, FPM Supplement 990-2.

✓ Paragraphs 12-1, chapter 630 of the FPM and SI2-1, Book 630, FPM Supplement 990-2, make a distinction between "absence without leave" and "leave without pay". Both define leave without pay as a temporary nonpay status and absence from duty granted upon the employee's request. This covers only those hours which an employee would otherwise work or for which he would be paid. Both paragraphs state further that the permissive nature of leave without pay distinguishes it from absence without leave, which is a nonpay status resulting from an agency determination that it will not grant any type of leave (including leave without pay) for a period of absence for which the employee did not obtain advance authorization or for which his request for leave on the basis of alleged sickness has been denied. Paragraphs 1-6, chapter 630, FPM, and SI-6, FPM Supplement 990-2 define "absence without leave" as an absence from duty which is not authorized or approved or for which a leave request has been denied. They further provide that disciplinary action may be taken when considered appropriate. As a result, there is no legal authority to support the proposition that an employee who is absent without leave and is therefore not entitled to pay and is subject to disciplinary action for failing to perform his duties, may nevertheless be rendering creditable Government service within the meaning of 5 U.S.C. § 5724(i).

Accordingly, Mr. Shelley's time in an "absent without leave" status from June 2, through 4, 1978, may not be credited toward his fulfillment of his 12 months service agreement. In view of this it follows that Mr. Shelley did not fulfill the statutory requirement contained in 5 U.S.C. § 5724(i) to remain in Government service

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for 12 months after the effective date of his transfer, and he is not entitled to reimbursement for travel and relocation expenses provided under that statute.


Deputy Comptroller General
of the United States