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DECISION



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

[Request to "Buy Back" Sick Leave in order to Receive Disability Compensation]

FILE: B-195238

DATE: August 23, 1979

MATTER OF: Oscar B. Bonner - "Buy back" of sick leave for leave without pay to accept compensation under the Federal Employees' Compensation Act

DIGEST: Employee may "buy back" sick leave taken in connection with a job-related illness in order to receive disability compensation under Federal Employees' Compensation Act, 5 U.S.C. § 8101, et seq. Where there are no official records from which to determine amount of leave taken, leave may be credited and bought back on basis of secondary evidence determined to be acceptable by agency. (Acceptable forms of secondary evidence include leave requests, Leave and Earnings Statements, Time and Attendance Reports, personal leave records, as well as certificates from supervisors and timekeepers.)

Mr. Oscar B. Bonner has appealed the adjudication of our Claims Division in Settlement Certificate Z-2744941, dated March 16, 1979, denying his claim (to "buy back" sick leave in order to accept compensation under the Federal Employees' Compensation Act for a work-related illness.)

Fundamental to the adjudication by our Claims Division is the fact that the Federal Aviation Administration (FAA) stated that Mr. Bonner's official leave records for the period claimed have been destroyed. Thus, our Claims Division concluded that where (the records necessary to either justify or refute a claim have been destroyed or become unavailable due to the lapse of time,) the accounting officers of the Government, in the absence of clear and satisfactory evidence of validity, may not give the matter favorable consideration where the claimant has failed to act on his claim for a long period of years.

(The claimant, has expressed ^{was} dissatisfaction with this result,) and in appealing the decision of our Claims Division Mr. Bonner (contends ^{ed} that clear and satisfactory evidence of an amount of sick leave used in connection with his work-related illness ^{is} provided in the record in the form of correspondence drafted by the Personnel Management Specialist at the Miami

his place of employment.

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Air Route Traffic Control Center (Miami ARTC Center) where Mr. Bonner was employed. We believe Mr. Bonner's contention is meritorious in the circumstances presented.

The record in support of Mr. Bonner's appeal presents the following chronology of events. In October 1967, Mr. Bonner received a flu shot given by the FAA. Subsequently, Mr. Bonner became ill and was hospitalized. However, it was not until Mr. Bonner visited the Mayo Clinic in August 1968 that his illness was correctly diagnosed. In October 1972, Mr. Bonner filed with the Office of Workers' Compensation Programs, claiming a job-connected illness. In July 1975, the Office of Workers' Compensation Programs informed both Mr. Bonner and the FAA that it had determined that Mr. Bonner's disability had been caused by the flu shot. Then, in August of 1976, the Office of Workers' Compensation Programs informed Mr. Bonner by letter that the injury entitled him to all compensation and medical benefits provided by the Federal Employees' Compensation Act for the inclusive periods from October 30, 1967, to February 1, 1968; and August 8 to August 23, 1968. This correspondence also advised Mr. Bonner in regard to the procedural requirements for effecting a "buy back" of the sick leave he had used during those periods.

In September of 1976, Mr. Bonner attempted to "buy back" the sick leave he had used by filing an "Application for Reinstatement of Leave" through the Office of Workers' Compensation Programs. In December of 1976, Mr. Bonner was notified that his employing agency was unable to provide the information necessary to permit restoration of sick leave because official records for the period in question had been destroyed. In January of 1977, the Personnel Management Specialist at the Miami Center--the facility at which Mr. Bonner was assigned--prepared a draft document based on facility records indicating that Mr. Bonner had used 530 hours of sick leave during the periods in question. However, following administrative review the agency determined that the application for restoration of leave could not be allowed on the basis of the information supplied and that no further action could be taken in the absence of Mr. Bonner's official sick leave records. Thereupon Mr. Bonner submitted his claim to our Claims Division for consideration.

An employee may not receive disability compensation under the Federal Employees' Compensation Act, 5 U.S.C. §§ 8101 et seq., for a period that he is carried in a leave-with-pay status. Under 20 C.F.R. § 10.310, annual and/or sick leave taken in connection with a work-related illness or injury may be bought back and the employee may be placed in a leave-without-pay status so that he may receive disability compensation. See FPM chapter 630, S12-2(b)(4)(d) and FPM Supplement 990-2, Book 630, S12-2(b)(5)(e). While the FAA recognizes Mr. Bonner's right to buy back leave taken in connection with his work-related illness, it is of the opinion that it cannot properly determine the amount of leave taken in the absence of official records. Thus, the question presented for review in this appeal is the nature of evidentiary support required to substantiate a request for restoration of leave where official records are unobtainable.

Mr. Bonner's claim involves the certification of leave credits. In our decision in 32 Comp. Gen. 310 (1953) we held that the determination as to whether leave should be credited incident to transfer to an agency under a different leave system is the primary responsibility of the agency involved. We set forth the following rule for general application in instances where there are no official records from which to construct an employee's leave account:

"* * * It is the view of this Office that the furnishing of certifications of leave credits based upon other than official records is not to be sanctioned. However, in lieu of a certification, where no official records are available, there should be furnished statements to requesting agencies of any other evidence which may be available in respect of employees' leave credits, including an estimate of his leave credit, if possible. Any such statements should clearly reflect the factors forming the basis of the estimate. The agency where the employee currently is employed may then determine whether upon the basis of such showing a credit of leave may be made."

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More specifically, we have held that where an employee's leave records have been destroyed, an agency may accept as evidence of leave usage the officially approved leave requests. B-175742, June 20, 1972. In addition, we have held that acceptable secondary evidence which will serve as a basis for crediting leave includes Time and Attendance Reports, Leave and Earnings Statements, personal leave records, as well as certificates of former supervisors and timekeepers indicating leave earned and used. Matter of Ruth L. Jones, B-189288, November 23, 1977. See also B-171947, June 16, 1972, and B-164220, September 5, 1968.

The draft letter of the Personnel Management Specialist at the Miami ARTC Center presents the following partial reconstruction of Mr. Bonner's sick leave account in relation to the periods of his illness:

"In researching our facility records, we have positively established the use of five hundred thirty (530) hours. This determination was made as follows:

- "(1) Standard Form 71 located in our employee's file establishes approval of three hundred ninety-four (394) hours of sick leave from October 30, 1967 through January 15, 1968 * * *;
- "(2) We further establish ninety-six (96) hours from August 8, 1968 through August 23, 1968 while being diagnosed and treated at the Mayo Clinic located in Rochester, Minnesota. * * *;
- "(3) In addition to above, supervisory personnel, Octavio Cowart, Assistant Chief, authorized sick leave for purposes of transportation to and from Mayo Clinic. These days were August 5, 6, 7, 26 and 27, 1968, for a total of forty (40) hours of sick leave.

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We fully realize that Mr. Bonner used more sick leave in connection with this illness, but no records exist with which to substantiate leave in excess of five hundred thirty (530) hours."

The matter of establishing Mr. Bonner's leave usage does not directly involve a monetary claim payable by this Office. Thus, it is the employing agency rather than this Office that has responsibility for determining the acceptability of secondary evidence available from which to reconstruct an employee's leave account. We point out, however, that items 1 and 3 of the evidence referred to in the draft letter, quoted above, are in the nature of evidence which we have held to be acceptable in the absence of official records. Given the fact that Mr. Bonner was authorized sick leave for transportation to and from the Mayo Clinic in August 1968, it would be appropriate to rely on the bill from the Mayo Clinic referred to in item 2 as establishing his use of leave from August 8 to August 23, 1968.

(Since the FAA's original conclusion that it is unable to provide information necessary to restore leave used by Mr. Bonner in connection with his job-related illness appears to have been based on the absence of official records, the employee's request for restoration of leave should be considered in light of the secondary evidence presented.) → acceptable...


Deputy Comptroller General
of the United States