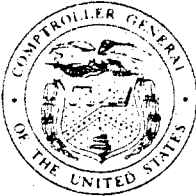


PLM I 14795



DECISION

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

FILE: B-199794

DATE: September 2, 1980

MATTER OF: Anthony J. Gabriel [Recredit of Sick Leave following Congressional employment]

DIGEST: Former GAO employee worked more than 3 years in Congressional office before accepting position with NASA. Although employee could not earn or use accrued sick leave in Congressional position, such employment is Federal service and is not considered break in service. Sick leave accrued in GAO position should be credited for use by NASA in accordance with 5 C.F.R. § 630.502(e).

This decision is in response to a request from The Honorable Eldon D. Taylor, Inspector General, National Aeronautics and Space Administration (NASA), concerning the entitlement of Mr. Anthony J. Gabriel, a NASA employee, to recredit of sick leave earned prior to a period of Congressional employment. The question presented is whether Congressional employment constitutes a break in Federal service for the purposes of the regulations governing recredit of unused sick leave.

Mr. Gabriel was formerly employed by the General Accounting Office (GAO) in a position covered by the Annual and Sick Leave Act, 5 U.S.C. §§ 6301 et seq., and prior to his resignation on January 15, 1977, he had accrued 1,808 hours of sick leave. Mr. Gabriel was then employed by the Appropriations Committee of the House of Representatives until April 30, 1980, at which time he was employed by NASA in a position covered by 5 U.S.C. §§ 6301 et seq. Mr. Gabriel's sick leave was not transferred or made available for his use while he was employed by the House Appropriations Committee since the Committee does not have a sick leave system and such Congressional employment is not covered by 5 U.S.C. §§ 6301 et seq. See 5 U.S.C. § 6301(2)(vi). The question raised by NASA is whether Mr. Gabriel's sick leave may be recredited since there has been a period of more than 3 years between Mr. Gabriel's employment in positions covered by the statutory leave system.

Under the authority of 5 U.S.C. § 6311, the Office of Personnel Management (OPM) has issued regulations governing the recredit of sick leave. See 5 C.F.R. § 630.502 (1980). These regulations provide, in pertinent part, as follows:

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"(b)(1) Except as provided in paragraph (b)(2) of this section, an employee who is separated from the Federal Government or the government of the District of Columbia is entitled to a recredit of his sick leave if he is reemployed in the Federal Government or the government of the District of Columbia, without a break in service of more than 3 years.

* * * * *

"(e) An employee who transfers to a position to which he cannot transfer his sick leave is entitled to a recredit of the untransferred sick leave if he returns to the leave system under which it was earned, without a break in service of more than 3 years."

As to what constitutes a "break in service", our Office has held that it means an actual separation from the Federal service. See 54 Comp. Gen. 669 (1975); and 47 *id.* 308 (1967). The fact that an employee does not accrue leave in a position is not determinative of his entitlement to later recredit of prior accrued sick leave. 31 Comp. Gen. 485 (1952).

Although Congressional employment is not subject to the statutory leave system, such employment is Federal service. See, for example 5 U.S.C. §§ 2105 and 8331(1). Therefore, we conclude that Congressional employment does not constitute a break in service as contemplated under 5 C.F.R. § 630.502. We have been informally advised by officials at OPM that they concur in this opinion.

Accordingly, since Mr. Gabriel has not undergone a break in service, his sick leave should be recredited by NASA under the provisions of 5 C.F.R. § 630.502(e).

Harry R. Jan Claus
For the Comptroller General
of the United States