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DECISION

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

FILE: B-202382 **DATE:** November 12, 1981

MATTER OF: Irving A. Taylor - Recredit of Sick Leave

DIGEST: Employee who had a break in Federal service of over 3 years seeks recredit of sick leave on basis that he was employed by various organizations and instrumentalities that receive Federal funding. Employee contends that such employment avoids a break in service in excess of 3 years. Under 5 C.F.R. § 630.502(b)(1), a recredit of sick leave is permitted when an employee's break in service does not exceed 3 years. Since service with private organizations or state instrumentalities that receive Federal funding does not constitute Federal service, employee may not have sick leave recredited.

Mr. Irving A. Taylor appeals the settlement of our Claims Group which denied his request for recredit of sick leave because he had had a break in Federal service in excess of 3 years. Since the applicable regulations do not permit the recredit of sick leave where an employee has a break in service in excess of 3 years, Mr. Taylor's appeal is denied.

Mr. Taylor has been employed as a Public Health Advisor by the Public Health Service (PHS) since February 1979 following a break in Federal service of over 11 years. In July 1980, he was advanced 240 hours of sick leave to help him cover a period of incapacitation from July 23 to October 4, 1980. The agency states that as of June 13, 1981, Mr. Taylor had reduced the balance of the advance of sick leave to 178 hours. Apparently, faced with the uncertain condition of his health, Mr. Taylor is interested in eliminating this negative sick leave balance. Therefore, he asked the PHS personnel office whether he could be recredited with a portion of the 840 hours of sick leave he had to his credit when he was separated from the Agency for International Development in 1967. The personnel office advised him that the sick leave could not be recredited since

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applicable regulations do not permit the recredit of leave when the employee has had a break in Federal service in excess of 3 years. Mr. Taylor appealed that determination to our Claims Group, which issued a settlement concurring with the PHS personnel office.

In his appeal of the Claims Group settlement, Mr. Taylor states that he originally requested recredit of only enough sick leave to cover the advance of sick leave. However, he notes that, although he did not serve as a Federal employee following his departure from AID in 1967 until his appointment with the PHS in 1979, all of the interim positions that he held were with various private organizations and state instrumentalities that were Federally funded. He concludes, therefore, that there was no break in service. Accordingly, he now requests recredit of the full 840 hours of sick leave to his credit at the time of his separation from AID in 1967. Finally, Mr. Taylor requests that, in the event his appeal is denied, the matter be considered for submission to Congress as a meritorious claim under 31 U.S.C. § 236 (1976).

Under the authority of 5 U.S.C. § 6311 (Supp. III 1979), the Office of Personnel Management (OPM) has issued regulations governing the recredit of sick leave. See 5 C.F.R. § 630.502 (1981). These regulations provide at paragraph (b)(1):

> "* * * 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."

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 Comp. Gen. 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). However, because the regulations at section 630.502 do not define what type of service qualifies as Federal service, this Office has decided these questions on a case-by-case basis. Thus, we have held that service as a

Peace Corps volunteer does not constitute "service" for the purposes of this regulation. B-175209, August 14, 1972. We have also held that service with the Food and Agricultural Organization of the United Nations does not constitute service for the purposes of the regulation. Richard E. Corso, B-180857, August 27, 1974. On the other hand, we have held that congressional employment, although not subject to a statutory leave system, does constitute Federal service for the purpose of this regulation. Anthony J. Gabriel, B-199794, September 2, 1980. See also the discussion and table of creditable civilian and military service contained in Appendix B of the Federal Personnel Manual Supplement 296-31.

Service with a private organization or state instrumentality where the sole connection with the Federal Government is that it is the recipient of Federal funds pursuant to a program authorized by Congress does not qualify under any of the above-cited references. Accordingly, we hold that such service does not constitute Federal service within the meaning of 5 C.F.R. § 630.502. It follows that, for the purposes of section 630.502 (b)(1), Mr. Taylor had no qualifying service between his separation from AID in 1967 and his employment with the PHS in 1979. Thus, his break in service exceeds the 3 years permitted by section 630.502(b)(1). For this reason, he is not entitled to a recredit of the sick leave to his credit at the time of his separation from AID in 1967.

Finally, Mr. Taylor has requested that in the event his claim for recredit of sick leave is denied, we consider his claim as a meritorious claim under 31 U.S.C. § 236. That section authorizes the Comptroller General to submit to the Congress a claim which may not lawfully be allowed, but which contains such elements of legal liability or equity to be deserving of consideration by Congress.

The problem that gave rise to Mr. Taylor's recredit of sick leave was his concern about being indebted for the advance of the 240 hours of sick leave. We have been advised that Mr. Taylor is about to submit an application for disability retirement. Section 630.209(b) of title 5 of the Code of Federal Regulations (1981) provides that an employee

who is indebted for unearned leave and who retires for disability or is separated or resigns on such account is not required to refund the amount of that indebtedness. See Jay Sisco, B-188903, July 6, 1977. If Mr. Taylor's application for disability retirement is acted upon favorably, then he will not be required to refund the advance sick leave. For this reason, we will take no action on his request for referral of this matter to Congress as a meritorious claim at this time.

for Milton J. Socolar
Comptroller General
of the United States