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DECISION

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

FILE: 203801 DATE: August 13, 1982

MATTER OF: American Federation of Government Employees Local 1364 - Military Leave or Annual Leave

DIGEST: Advance party of several civilian employees of Carswell Air Force Base were issued two sets of orders for active military duty; one set of orders was for advance duty on Thursday and Friday, June 5-6, 1980, and the other set was for regular summer camp duty on June 7-21, 1980. However, after an audit, the Air Force computed military leave for those employees as if there was only one period of active duty and charged 1 day's annual leave in addition to 15 days' military leave. The union claims that military leave should have been computed for each tour of duty separately and no annual leave charged. Since the absence for military leave was continuous and the weekend of June 7-8 fell wholly within the period of absence, military leave must be charged for those days. The union's claim on behalf of its employees is denied.

This decision is in response to a request for a decision filed by James M. Carter, President, American Federation of Government Employees (AFGE) Local 1364, on behalf of several civilian employees of Department of the Air Force. Pursuant to 4 C.F.R. Part 22 (1981) (originally published as 4 C.F.R. Part 21 at 45 Fed. Reg. 55689-92, August 21, 1980), the Air Force was served with a copy of AFGE's request, but has filed no written comments or response.

The main issue in this case is whether employees must be charged military leave for nonworkdays at the beginning of a second tour of military duty when the second tour begins the day after the end of the first tour of military duty. We hold that the employees in question must be charged military leave for the nonworkdays at the beginning of the second tour of military duty under the circumstances described below.

Civilian Air Force Technicians of the 301st Tactical Fighter Wing at Carswell Air Force Base, Texas, were sent to Hill Air Force Base, Utah, for military duty at summer camp from Saturday June 7 to Saturday, June 21, 1980. Management of the 301st asked for volunteers for an advance party to go to Hill Air Force Base on June 5-6, and assured the employees that they could use military leave instead of annual leave during this time. Management issued two different sets of military orders for the employees who volunteered for the advance party. One set of orders was for advance duty on June 5-6 and the other set was for summer camp duty from June 7-21.

Other employees who were issued orders for June 7-21 only were charged military leave for 12 days from June 9 to June 20. They were not charged military leave for June 7, 8, and 21 because those days were nonworkdays at the beginning and end of military duty. Originally, the employees who served under both sets of orders were not charged military leave for June 7 and 8. However, after an audit, those employees who were on the advance party were charged military leave for Saturday and Sunday, June 7 and 8, pursuant to Air Force Regulation 40-631, July 6, 1973, which states in Paragraph 23e(1) as follows:

> "e. How Military Leave is Charged:
> (1) Military leave granted under paragraph c(1) above is charged on a calendar day basis. No charge is made for nonworkdays at the beginning and end of a period of absence on active military duty. However, all intervening nonworkdays falling within the period of military duty must be charged to military leave. An employee cannot be granted more than 15 calendar days of military leave for any 1 period of active duty although the tour extends into another calendar year. * * *"

The Air Force concluded after the audit that the advance party employees had actually served one continuous period of duty. Accordingly, pursuant to the quoted regulation, those employees were charged leave for each day beginning Thursday, June 5 until Thursday, June 19, a total of 15 days, including the intervening nonworkdays of June 7 and 8. Their absence on Friday, June 20, was charged to annual leave. No leave was charged for

Saturday, June 21, since it was a nonworkday at the end of a period of absence on active military duty. The other employees who did not participate in the advance party were not charged military leave for June 7 and 8 and received no charge to annual leave.

The union contends that there were two different periods of active duty for the advance party since there were two sets of orders and, therefore, military leave should be charged by the following method pursuant to the regulations. The employees should be charged military leave for June 5 and June 6 in accordance with the first set of orders. Then, under the second set of orders, the employees should be charged military leave only for the period from Monday, June 9 until Friday, June 20. The union reasons that June 7 and 8 should not be charged to military leave since the regulation states that no charge is made for nonworkdays at the beginning and end of a period of absence on active military duty.

Employees must be charged military leave for any intervening nonworkday occurring during periods of ordered military training. 27 Comp. Gen. 245; B-133674, December 30, 1957. However, when an employee is issued three different sets of orders for military duty which cover three consecutive Monday to Friday periods, military leave is not charged on the intervening weekends. The reason given for not charging military leave on those weekends was not that separate orders were issued but was that the employees were not on military duty during those weekends. An employee who is neither on military duty nor absent from civilian employment is not to be charged military leave. See B-171947, September 7, 1972; B-149951, November 23, 1962. But continuous military duty is not to be considered more than one period of military duty under the law and regulation because more than one order to military duty is involved.

In the present case, the employees in the advance party were continuously on military duty and the weekend of June 7 and 8 fell wholly within their period of duty. Accordingly, those days must be charged to military leave.

The second issue that the union raises is that the employees were incorrectly charged annual leave after the audit required the employees to be charged military leave for the disputed days. The union contends that

the employees never requested leave nor initialed the leave cards. The union contends that the employees were on enforced leave and that procedural requirements were not followed in using such leave. Finally, the union contends that, since management made a mistake by informing employees that no annual leave would have to be taken, administrative leave should be granted to the employees.

We disagree with the union's contentions. We have ruled consistently that the granting of annual leave is within administrative discretion in respect to any period of time, and it is legally proper for an administrative office to charge an employee annual leave for periods during which he is absent from an official duty station. It is immaterial, in such cases, that the employee had not requested leave. See 31 Comp. Gen. 581, 1952; 40 id. 312, 1960, B-166469, September 25, 1969.

In view of these decisions, we conclude that management acted correctly in charging annual leave after the audit although annual leave was not requested. Accordingly, the union's claim for restoration of annual leave is denied.

for Shelton J. Dorsey
Comptroller General
of the United States