

DECISION

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

FILE: B-208706

DATE: August 31, 1983

MATTER OF: Federal Bureau of Investigation - Military
Leave - Active Standby Reserve Elective
Training

DIGEST:

Special Agents of the FBI who have been designated Key Federal Employees and are members of the Standby Reserve are entitled to military leave under 5 U.S.C. § 6323(a) when they are on active duty for training. The employees may not use or be charged annual leave for such duty unless the period of active duty for training exceeds the military leave available to the employee.

L. Clyde Groover, Jr., Assistant Director, Administrative Services Division, Federal Bureau of Investigation (FBI), has requested our opinion as to whether the FBI can authorize its Special Agents to participate in elective Standby Reserve training, while denying the use of military leave. For the reasons discussed below, the employees involved are entitled to military leave for the time spent while on elective active duty for training in accordance with 5 U.S.C. § 6323(a). Also, FBI Special Agents may not be permitted to use annual leave, if they are entitled to use military leave, subject to the limitations discussed below.

BACKGROUND

The FBI currently prohibits the participation of its Special Agents in the Ready Reserve in accordance with Department of Defense Directive 1200.7, November 28, 1978. All FBI Special Agent personnel have been designated as Key Federal Employees, and, therefore, are prohibited from being members of the Ready Reserve.

Special Agents, as Key Federal Employees may participate in the Standby Reserve to maintain their equity in the Reserve system. The Standby Reserve is composed of

an Active Status List and an Inactive Status List. Units and members of the Standby Reserve may be ordered to active duty only in times of national emergency declared by Congress or when otherwise authorized by law. 10 U.S.C. §§ 672 and 674. These provisions also provide that Standby Reservists on the Active Status List can be ordered to active duty only when there are insufficient Ready Reserve units or individuals available.

Members of the Ready Reserve are required to participate in training activities in accordance with 10 U.S.C. § 270 and Department of Defense Directive 1215.5, May 25, 1979. Members of the Standby Reserve have no such training requirements, but may elect to participate in unpaid Reserve training for retirement purposes only in accordance with Department of Defense Directive 1215.6, January 31, 1974, which provides in paragraph V.B.C.2 that:

"C. 2. Standby Reserve

- "a. Active Status List. The following members of the Standby Reserve Active Status List may participate voluntarily in reserve training for retirement points only:

* * * * *

- "(4) Members of Congress and Federal employees, transferred from the Ready to the Standby Reserve as key personnel, may volunteer for assignment to the Standby Reserve Active Status List for the period they remain designated as key personnel. Individuals who desire to be transferred will apply directly to the Armed Force concerned, except for members and employees of the Legislative and Judicial Branches of the Federal Government who will apply to the Armed Force concerned through the Office of the Assistant Secretary of Defense (Manpower and Reserve Affairs). * * *"

This is supported by Chapter 2, Section A, paragraph 80201(b) of the Department of Defense, Military Pay and Allowances Manual which provides that a member of a Reserve Component may, with his consent, be ordered to active duty without pay.

A Standby Reserve member on the Active Status List who volunteers for training, participates in the same training as do members of the Ready Reserve who are required to do so. That training consists of 48 scheduled drills or training periods and not less than 14 days of active duty for training each year. 10 U.S.C. § 270 (1976).

The FBI has received inquiries from Special Agents asking whether they might use annual leave for elective Standby Reserve training. The issue is whether the FBI may authorize Special Agent participation in elective training for the Standby Reserve while denying the use of military leave. The FBI does not desire to authorize such elective reserve training for its Special Agents if it must grant military leave for that purpose.

ANALYSIS

Military leave for civilian employees of the Federal Government is authorized by 5 U.S.C. § 6323 (Supp. IV 1980), which provides in part:

"(a) * * * an employee * * * is entitled to leave without loss in pay, time, or performance or efficiency rating for active duty or engaging in field or coast defense training under sections 502-505 of title 32 as a Reserve of the armed forces or member of the National Guard. * * *"

Hence, an employee is entitled to military leave only if he is on active duty for training as a member of a Reserve Component or if he is engaged in field or coast defense training as a member of the National Guard. No distinction is drawn in this section between voluntary and required active duty for training. Thus, if an employee participates in active duty for training, the requirements of section 6323(a) are met, and the employee is entitled to military leave. Effective October 1, 1980, such leave accrues at the rate of 15 days per fiscal year, and accumulates for use in future years not to exceed 30 days during a fiscal year. Public Law 96-431, October 10, 1980, 94 Stat 1850. However, participation in weekend drills is

not considered active duty for training and employees participating in those drills are not eligible for military leave. Robert Voigt, B-202564, July 31, 1981, and Pete Lewis, Jr., B-188145, November 15, 1977.

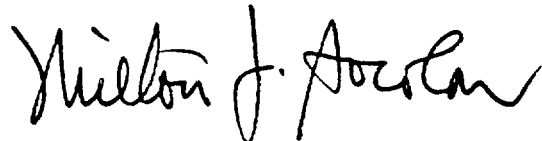
We have held that an employee who is eligible for military leave in aid of law enforcement under what is now 5 U.S.C. § 6323(b) may not elect to use, nor may he voluntarily be charged with annual leave, until his military leave is exhausted. 49 Comp. Gen. 233 (1969). We have also held that an agency has the discretion to determine when military leave should be granted if the period of active military duty is more than the 15 days then allowed for military leave. 41 Comp. Gen. 320, 328 (1961). In that case we stated that ordinarily an agency should charge the first 15 days of active duty to military leave.

CONCLUSION

In deciding whether the FBI may charge annual leave instead of military leave here, we conclude that the FBI must grant military leave to the extent that it is available. The FBI may not charge, nor allow an employee to use, annual leave for periods in which he is entitled to military leave.

Accordingly, Special Agents of the FBI who are on the Active Status List of the Standby Reserve are entitled to military leave if they volunteer for and participate in active duty for training. Annual leave may be used by these employees entitled to military leave only if they are called up for active duty for training for a period in excess of the military leave available.

In holding that Special Agents of the FBI must be granted military leave if they volunteer for and participate in active duty for training, we do not reach the issue of whether they should be authorized to transfer from the Inactive Status List to the Active Status List within the Standby Reserves so as to be eligible to participate in such training. This question should be considered and decided by the FBI and the services involved under DOD Directive 1215.6.



Acting Comptroller General
of the United States