DECISION

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

FILE: B-209068 **DATE:** January 20, 1983

MATTER OF: Recredit of Sick Leave of FBI Employee After Break in Service

DIGEST:

Employee who had a break in Federal service of more than 3 years seeks recredit of sick leave on the basis that he was prevented from earlier reinstatement by the imposition of a Federal hiring freeze, and by the agency's delay in completing his required background investigation. Employee's unused sick leave may not be recredited since under 5 C.F.R. § 630.502(b)(1), recrediting of sick leave is permitted only when an employee's break in service does not exceed 3 years. Neither this Office nor the agency concerned may waive or grant exceptions to that regulation, which has the force and effect of law.

This decision is in response to a request from Mr. Kevin D. Rooney, Assistant Attorney General for Administration, United States Department of Justice (DOJ), concerning the entitlement of an unnamed Federal Bureau of Investigation (FBI) employee to recredit of sick leave earned prior to a separation from Federal employment. The question presented is whether an employee who had a break in Federal service of more than 3 years is entitled to recredit of previously earned sick leave where the agency's delay in processing his reemployment application, and the imposition of a Federal hiring freeze, may have prevented him from being reinstated within 3 years of his separation from Government service. For the following reasons, we hold that the employee is not entitled to a recredit of his unused sick leave.

The individual in question was employed by the FBI from March 5, 1972, through May 15, 1979, when he voluntarily resigned. During that period, the employee earned but did not use 439 hours of sick leave. Thereafter, in November 1981, he sought reinstatement as a GS-3 Telephone Operator at the FBI Academy in Quantico, Virginia. The FBI could not reemploy him at that time, however, because the agency was subject to a Federal hiring freeze, and the position which the individual had applied for was not an essential position for which an exception to the freeze could be made.

Finally, on March 29, 1982, an opening developed for a GS-5 Guard at the FBI Academy. Since this was determined to be an essential position, the agency was authorized to fill it. The FBI then determined that the unnamed individual was qualified for the position, and decided to offer him the job upon completion of a required background investigation. This investigation was delayed, however, because of other pressing office matters. As a result, the employee was not officially notified of the job offer until May 14, 1982. Although he accepted the offer shortly after notification, the employee did not actually enter on duty until May 24, 1982, 3 years and 9 days after his prior resignation.

In its submission, the DOJ has acknowledged that 5 C.F.R. § 630.502 generally prohibits the recredit of sick leave to an employee who is reemployed after a break in Federal service of more than 3 years. The DOJ further acknowledges that the employee in question here "did not enter on duty until after three years elapsed from his resignation." Still, the agency argues that an exception should be made in this case, and recredit allowed, since the Federal hiring freeze and the agency's delay in processing the employee's application prevented him from being reinstated within the specified 3-year period. In making this argument, the DOJ stresses that both the agency's offer of employment and the employee's acceptance of that offer preceded the expiration of the 3-year limitation period.

Under the authority of 5 U.S.C. § 6311, the Office of Personnel Management (OPM) has issued regulations governing the recredit of sick leave. These regulations provide that:

> "* * * 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." 5 C.F.R. § 630.502(b)(1) (1982).

Since this regulation was promulgated pursuant to express statutory authority, it has the force and effect of law. Neither our Office nor any agency in the executive branch of the Government has the authority to waive or grant exceptions to the regulation's proscription against recrediting

sick leave following a break in service in excess of 3 years. See Jon P. Kindice, B-198627, November 7, 1980, reconsideration denied, October 20, 1981; and William F. Gallo, B-180604, April 9, 1974.

Further, the general rule applicable to appointments is that they are effective only after the appointee has accepted the appointment and actually entered on duty. Rodgers D. O'Neill, B-205972, May 25, 1982. See also 54 Comp. Gen. 1028, 1030 (1975). The appointee may signify acceptance of an employment offer by verbal affirmation, taking the oath of office, assuming the duties of the position, or by some other overt act. 45 Comp. Gen. 660 (1966).

While the record in this case indicates that the employee in question may have accepted the agency's job offer on or before the expiration of 3 years, it also clearly indicates that he did not actually enter on duty until May 24, 1982. Therefore, his appointment cannot be considered to have been effective until that time. In the absence of an effective appointment, it cannot be said that the employee was reemployed at any time prior to his actual entrance on duty on May 24, 1982.

Since the employee in this case was not, in fact, reemployed within the 3-year time period specified by 5 C.F.R. § 630.502(b)(1), he is not entitled to a recredit of his previously earned sick leave pursuant to that regulation. Notwithstanding the existence of difficult circumstances which may have delayed the reinstatement of the employee in question, we find no legal basis upon which to base a recredit of his previously earned sick leave hours.

Accordingly, the claim is denied.

for Milton J. Socolar
Comptroller General
of the United States