

DECISION

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

FLM-1
Blatch

FILE: B-210741

DATE: April 24, 1984

MATTER OF: Shirley A. Lombardo - Part-Time Employee's
Entitlement to Holiday

DIGEST:

Part-time employees are not covered by 5 U.S.C. § 6103(b) and Executive Order 11582 which authorize designated and in lieu of holidays for full-time employees when an actual holiday falls on an employee's nonworkday. However, agencies have discretion to grant part-time employees administrative leave for these holidays.

The issue in this case is whether part-time employees are entitled to designated or in lieu of holidays. We hold that they are not entitled to such holidays under existing authorities, but that agencies may grant administrative leave for such holidays.

The request for an advance decision is from Virginia C. Jenkins, Director of Civilian Personnel, National Security Agency (NSA) Fort George G. Meade, Maryland, concerning the claim of Shirley A. Lombardo, a permanent part-time employee of that agency, for compensation without charge to leave for absence from work on Friday, December 24, 1982, and Friday, December 31, 1982, both designated holidays.

FACTS

Mrs. Lombardo is a permanent, part-time employee at NSA. She has a regularly scheduled workweek of Tuesday through Friday, 8 hours per day, 32 hours per week. In the 1982 holiday season, Christmas and New Year's Day fell on a Saturday. Therefore, Friday, December 24, 1982, and Friday, December 31, 1982, were observed as holidays and Mrs. Lombardo's office was not in operation. Mrs. Lombardo was charged 8 hours of annual leave for each of these days. When she inquired about it, she was advised that as a part-time employee, she was not entitled to be paid for days observed as holidays when the actual holiday fell on one of her nonworkdays.

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Mrs. Lombardo requests payment for the 16 hours. She notes that she was previously employed as a permanent part-time employee at the U.S. Naval Academy and the Navy paid her for the 6 hours she was regularly scheduled to work on a Monday when Christmas and New Year's fell on a Sunday but were observed on Monday.

The agency requested a decision on this issue and notes that its policy of not compensating part-time employees for days observed as holidays when the actual holiday falls on a nonworkday is based on the Comptroller General's decisions at 32 Comp. Gen. 378 (1953) and B-192104, September 1, 1978.

DISCUSSION

As pointed out by the agency, we have previously held that part-time employees are not, as a matter of right, entitled to compensation for days observed as holidays in lieu of actual holidays. In 32 Comp. Gen. 378, cited by the agency, we reasoned that since the provisions authorizing in lieu of holidays refer to the "basic workweek" of employees, and because the definition of basic workweek refers only to full-time employees, only full-time employees are entitled to compensation for such days. See also, B-192104, September 1, 1978.

We also note that 5 U.S.C. § 6103(b) and Executive Order 11582 (set out as a note following section 6103), which authorize designated or in lieu of holidays, provide very specific formulas for determining which day should be observed as a holiday when the actual holiday falls on a nonworkday. Those formulas are clearly not designed for application to part-time schedules.

For example, if part-time employees were considered to come within the scope of 5 U.S.C. § 6103 and Executive Order 11582, a part-time employee regularly scheduled to work 16 hours a week, 8 hours on Tuesday and 8 hours on Wednesday, would receive 8 hours off with pay virtually everytime there was a holiday. If a holiday fell on Tuesday or Wednesday, the employee would have off because it fell on their regularly scheduled workday, consistent with 32 Comp. Gen. 378 (1953).

If a holiday fell on Sunday, under the formula in Section 3(a) of the Executive Order, the employee would

get the following Tuesday off with pay. If a holiday fell on Monday, under section 6103(b)(2), the employee would have off the Wednesday of the preceding week. If a holiday fell on a Thursday, Friday, or Saturday, under section 6103(b)(2), the employee would have off the Wednesday of the same week. Thus, in the case of a part-time employee, the smaller the number of regularly scheduled workdays, the greater the proportional entitlement to designated or in lieu of holidays.

We do not believe such a strained interpretation of the statute or Executive Order is supportable. We therefore conclude that part-time employees are not covered by 5 U.S.C. § 6103(b) and Executive Order 11582.

AGENCY DISCRETION

As Mrs. Lombardo points out, however, while employed on a part-time basis at another agency, she did receive payment for designated or in lieu of holidays to the extent such holidays fell within her regularly scheduled workweek.

We note in this regard that although 5 U.S.C. § 6103(b) and Executive Order 11582 do not apply to part-time employees, an agency is not precluded from granting administrative leave to a part-time employee for the designated or in lieu of holidays of full-time employees to the extent such days fall within the regularly scheduled workweek of the part-time employee. Roberta Sugar, B-194821, April 24, 1980; see also Merit Systems Protection Board, 62 Comp. Gen. 1 (1982). In fact, we are administratively advised that, although it is not required, most career part-time employees such as Mrs. Lombardo are relieved from duty without charge to leave on the designated or in lieu of holidays of full-time employees. We favor this practice.

The administrative difficulties of requiring part-time employees to report for work when all or most other full-time employees are absent and not able to provide supervision or support services is a sufficient basis for granting administrative leave. Even in those instances where facilities may be kept in operation on weekends and holidays, agencies may give administrative leave to part-time employees for designated or in lieu of holidays where it would be in the best interest of the employees

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and the agency. Excusal for such brief periods is within the discretion of the employing agency. See generally, Elmer DeRitter, Jr., 61 Comp. Gen. 652 (1982).

In view of the above, Mrs. Lombardo's claim is denied, but her agency is advised that it may, in its discretion, grant her administrative leave for the designated or in lieu of holidays of full-time employees which occur within her workweek.

A handwritten signature in cursive script, reading "Milton J. Fowler".

Acting Comptroller General
of the United States