

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 2054.

26307

FILE: B-211249

DATE: September 20, 1983

MATTER OF: George McMillian

- DIGEST: 1. A civilian Government employee who was a member of the Navy Reserve could not properly be regarded as present for work in his civilian position while he was simultaneously on active duty as a reservist, since civilian service is incompatible with military or naval active duty status. Hence, even though the employee continued to report for civilian work for several days after he was placed on active Navy duty under orders for annual Reserve training, his civilian leave accounts must be charged with a day's leave of absence for each of those days.
2. The 15 days of yearly military leave authorized for civilian Government employees by 5 U.S.C. 6323(a) are chargeable on a calendar-day rather than a workday basis, except for days at the beginning or ending of the military active duty period, so that a civilian employee who was a Navy Reserve member must be charged with 3 days of military leave for a 3-day Labor Day weekend falling within a 12-day period when he was on active Navy duty for annual Reserve training.
3. A Federal agency should ordinarily charge an employee performing active training duty as a military or naval reservist with military leave until the employee's military leave entitlements under 5 U.S.C. 6323(a) are exhausted, and the agency may then charge the employee with annual leave or leave without pay for any further absences from work taken for the purpose of performing additional periods of active training duty. An employee who took leaves of absence from his civilian

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position to perform active duty as a Navy reservist for periods exceeding his military leave entitlements should be so charged.

This action is in response to a request for a decision from the Commanding Officer of the Naval Weapons Station, Seal Beach, California, concerning the procedures that should have been used to charge the military and annual leave accounts of a civilian employee at the installation, Mr. George McMillian, for periods that he performed active duty for training as a member of the Navy Reserve between 1979 and 1982. The request was forwarded here by letter dated March 21, 1983, from the Office of the Comptroller of the Navy.

We conclude that the procedures initially used to charge Mr. McMillian's leave accounts were in error, and that certain corrections which were made should also be adjusted.

Mr. McMillian was appointed to a civilian position at the Seal Beach Navy station on June 10, 1979. Between that date and June 25, 1982, he took leaves of absence from his civilian employment on eight different occasions to perform periods of active duty for training as a member of the Navy Reserve. During those periods he received credit for continued civilian earnings concurrently with credit for active duty Navy pay and allowances. In January 1983, following an audit of his civilian payroll records, certain questions arose concerning the correctness of the procedures that were used to account for these eight leaves of absence.

The entries made in Mr. McMillian's leave accounts for calendar year 1979 illustrate the circumstances giving rise to all of the questions in this matter. Between January and June 1979, Mr. McMillian held other civilian Government employment, and he used 5 of his 15 days of yearly military leave for active Reserve duty during those months. Hence, when he was appointed to a civilian position at Seal Beach on June 10, 1979, he had 10 days of military leave remaining to his credit for the year. He then performed a 12-day tour of active Reserve duty from Monday, August 27, through Friday,

September 7, 1979. He was charged no leave for the days of August 27, 28, and 29, on the theory that he performed the work of his civilian position on those days concurrently with the performance of active duty in the Navy. He was allowed to take annual leave for the days of August 30 and 31. He was charged no leave for the days of September 1, 2, and 3, on the theory that these were nonworkdays covering a weekend and a holiday. He was charged with 4 days' military leave for the remaining 4 days of the 12-day active duty period from September 4 through September 7. Mr. McMillian performed another 5-day tour of active Reserve duty from Monday, December 10, through Friday, December 14, 1979, and that 5-day absence was charged to military leave. Thus, between August and December 1979 Mr. McMillian performed two tours of active duty as a reservist totaling 17 days, for which he received 17 days' active duty pay and allowances, but he was charged only 9 days of military leave and 2 days of annual leave for these transactions. The procedures used to charge Mr. McMillian's leave accounts for tours of active Navy Reserve training duty he performed in the subsequent years in question follow the same pattern.

The request for a decision essentially raises the following questions concerning the manner in which leave should be charged in the case of Mr. McMillian and other civilian employees of the Government when they are performing active duty for training as military and naval reservists:

1. While the employee is on active military or naval duty, may he avoid being charged with military leave by simultaneously performing his civilian work?
2. May the employee elect to use annual vacation leave rather than military leave on the days he is absent because he is performing active Reserve duty?
3. Must military leave be charged for civilian nonworkdays (Saturdays, Sundays, holidays, etc.) while the employee is on active duty?

4. What procedures should be followed if the employee performs additional days of active duty for training after he has used up all of his military leave?

Statutory authority for the military leave here in question is contained in subsection 6323(a) of title 5, United States Code. Subsection 6323(a) is derived from the act of May 12, 1917, ch. 12, 40 Stat. 72, as amended by the act of July 1, 1947, ch. 192, 61 Stat. 238, which were designed to permit Federal employees to attend training and field exercises as members of the Army Reserve Corps for up to 15 days per year without loss of civilian pay or vacation time. Throughout 1979 and until October 1, 1980, subsection 6323(a) authorized a civilian Government employee to have leave without loss of pay for each day, not in excess of 15 days in a calendar year, in which he was on active duty as a Reserve of any branch of the Armed Forces or as a member of the National Guard. Effective October 1, 1980, subsection 6323(a) was amended by Public Law 96-431, approved October 10, 1980, 94 Stat. 1850, to provide for the accrual of military leave at the rate of 15 days per fiscal year, and to allow the carryover of up to 15 days of unused accumulated military leave into a succeeding fiscal year.

In construing this statutory authority for 15 days of yearly military leave for Federal employees who are members of the Reserves and National Guard, we have long and consistently held that the following principles and procedures are to be followed:

1. During the period that an employee is subject to military control under active duty orders, the employee may not simultaneously be regarded as present for work in his civilian position, since civilian service is incompatible with military active duty status. However, the employee may be credited for civilian work performed before he becomes subject to military control on the first day of the active duty period, and for civilian work performed after release from military control on

the last day of the active duty period. See 52 Comp. Gen. 471 (1973); 49 Comp. Gen. 233, 243-244 (1969).

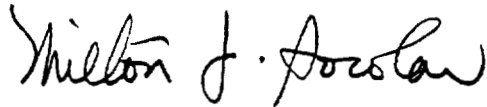
2. Military leave should be computed on a calendar-day basis instead of a work-day basis except for days at the beginning or ending of the active duty period, so that employees must be charged military leave for any intervening nonworkdays occurring during periods of ordered active duty. See Matter of AFGE Local 1364, 61 Comp. Gen. 558 (1982); Matter of Campbell, 60 Comp. Gen. 381, 384 (1981); 29 Comp. Gen. 269, 270-271 (1949); and 27 Comp. Gen. 245, 253 (1947).
3. An employee may not under normal circumstances elect to use annual leave rather than military leave for days he is absent from his civilian employment while performing active military duty under orders at his own option. However, the employee may be involuntarily assessed annual leave, or leave without pay if appropriate, for the days he is absent from civilian employment to perform active duty for training after his military leave has been exhausted. In that situation the employing agency should ordinarily charge the first 15 days of active duty to military leave, and then charge the days of absence from employment for the performance of additional active duty to annual leave or leave without pay. See Matter of AFGE Local 1364, 61 Comp. Gen. 558, cited above; Matter of Lewis, B-188145, November 15, 1977; 49 Comp. Gen. 233, cited above; and 41 Comp. Gen. 320, 327-328 (1961).

The 1980 amendments to 5 U.S.C. 6323(a), providing 15 days' annual military leave on a fiscal rather than a

calendar year basis and allowing the carryover of unused military leave to the next fiscal year, did not have the effect of changing any of these long-standing principles regarding the methods to be used in charging military leave.

In the case of Mr. McMillian, therefore, a day of military leave should be assessed for Monday, August 27, 1979, in the absence of any evidence that he was not placed in an active duty status under his orders until after he had completed his normal civilian workday on that date. A day of military leave should also be charged for each and every calendar day thereafter for the period while he remained in an active duty status. Military leave should be charged for each day of the 3-day Labor Day weekend between September 1 and 3. A day of annual leave or leave without pay should be charged for each additional workday he was in an active duty status after his military leave was exhausted in September and December 1979. Similar corrections in Mr. McMillian's leave accounts will be required for the succeeding years after 1979.

The questions raised are answered accordingly.


for Comptroller General
of the United States