



UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

Billard

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OFFICE OF GENERAL COUNSEL

B-213449

April 10, 1984

Mr. [REDACTED]
PSC Box 101
APO Miami 34007

Dear [REDACTED]:

We refer to your letter dated October 5, 1983, to the Comptroller General of the United States in which you request a decision on the question of whether unused sick leave, previously earned in another Federal agency, should be included as part of total service for the purpose of computing the annuity of an employee who retires after service with the Panama Canal Commission.

You state that you are currently employed by the Panama Canal Commission, apparently on the Isthmus of Panama, and are seeking a reversal of Panama Canal Commission and Office of Personnel Management policies which have the effect of denying credit in computing civil service annuities of retiring Canal Commission employees for unused sick leave earned in prior employment in other Federal agencies. You contend that the position violates the intent of Public Law 91-93, which was intended to encourage employees to save their sick leave for use in increasing their retirement annuity.

Although the Comptroller General and General Accounting Office exercise jurisdiction to settle certain claims for leave credit, as evidenced by the decision you referred to (B-199794), [REDACTED], 59 Comp. Gen. 704 (1980), claims under the civil service retirement system are outside that claims settlement authority. Those claims are matters for adjudication by the Office of Personnel Management. B-211256, June 7, 1983. Office of Personnel Management's decisions concerning retirement are final and conclusive except for possible appeals to Merit Systems Protection Board and the court, 5 U.S.C. § 8347. Thus, while a Comptroller General's decision is not being rendered in this matter, the following explanation may be of help to you.

Section 203(5) of Public Law 91-93, October 20, 1969, 83 Stat. 139, amended the Civil Service Retirement Act by adding a new subsection to 5 U.S.C. § 8339, subsection (m).

That subsection provides that an employee's "days of unused sick leave to his credit under a formal leave system" are to be included in the total service of an employee who retires on an immediate annuity so as to increase the retirement annuity.

From the correspondence included with your letter it appears that the Office of Personnel Management interprets language in 5 U.S.C. § 8339(m), "to his credit," to mean that only sick leave available for use can be included as total service in computing the annuity. The Office of Personnel Management and the Panama Canal Commission recognize that the commission has its own leave system and that system does not provide for sick leave or for crediting of sick leave earned previously in other leave systems. Therefore, it is the Office of Personnel Management's position that no Panama Canal Commission employee, at the time of retirement, would have any sick leave available for use or "to his credit." The Office of Personnel Management points out that any sick leave earned in another system could be recredited if the retired Panama Canal Commission employee is reemployed within 3 years in or transfers to another Federal agency having a similar leave system.

The Office of Personnel Management's position is supported by the provisions of the Annual and Sick Leave Act, which applies to Federal employees generally, and specifically excepts from its coverage employees of the Panama Canal Commission when employed on the Isthmus of Panama. See 5 U.S.C. § 6301(2)(iv). The Panama Canal Commission has its own leave system which generally provides for one type of leave only, termed annual leave. This leave system was established pursuant to 2 C.Z.C. § 101(a)(2), which was in effect prior to enactment of the Panama Canal Act of 1979. That section granted authority to the Canal Zone government to establish conditions of employment, including leave. The Panama Canal Act of 1979 preserved this independence in several provisions now codified in title 22, United States Code. We refer to section 3642 of title 22 which gives the Panama Canal Commission authority to appoint employees without regard to the provisions of title 5, United States Code, which pertains to the civil service. Section 3652(a) provides the President with authority to establish a Panama Canal employment system, and section 3658 specifically refers to leave, among the benefits contemplated.

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The Office of Personnel Management's letter of August 19, 1982 (attached to your letter), to [REDACTED] indicates that the agency is applying the Comptroller General's rationale in B-199794, September 2, 1980 (59 Comp. Gen. 704), to which you refer, to the Panama Canal Commission. In that decision the Comptroller General held that an employee previously employed by a Federal agency in a position covered by the Annual and Sick Leave Act, who accepts a position with another agency covered by the Act after being employed for over 3 years by a congressional committee, which did not have a sick leave system, can have any previously earned and unused sick leave recredited, since employment with the committee is not a break in Federal service. However, that decision would not provide authority to allow you to use previously accrued sick leave to increase your annuity should you retire immediately after employment with the Canal Commission.

As to your comment on Public Law 95-519, as you recognize, it is the prerogative of Congress to select or exclude any class of employees for coverage under chapter 63 of title 5, United States Code. That law did not affect employees of the Panama Canal Commission.

Sincerely yours,



Edwin J. Monsma
Assistant General Counsel