

**DECISION**



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

**FILE:** B-218666

**DATE:** April 29, 1986

**MATTER OF:** Paul C. Smith - Claim for Recredit of  
Involuntary Sick Leave

**DIGEST:**

1. Former air traffic controller was placed on involuntary sick leave pending his placement into second career training program and eventual retirement on disability. The employee is entitled to restoration of the involuntary sick leave since the determination to place him on sick leave was not based on competent medical evidence, and was contrary to agency procedures.
2. Former air traffic controller seeks to change his separation date in order to exhaust 159 hours of restored sick leave. The agency, in accordance with its own regulations concerning the use of sick leave prior to retirement, is required to adjust the employee's separation date to permit use of this restored leave.

ISSUES

The issues in this decision involve an employee's claim for recredit of involuntary sick leave, and his claim for use of that recredited sick leave prior to his retirement for reasons of disability. We hold that the involuntary sick leave must be restored since the agency's determination to place the employee on involuntary sick leave was contrary to agency regulations and was not supported by competent medical evidence. In addition, we hold that the agency is required to follow its own regulations to allow the employee to exhaust his sick leave account prior to his separation date.

BACKGROUND

This decision is in response to the claim of Mr. Paul C. Smith, a former air traffic controller employed with the Federal Aviation Administration (FAA) at the Knoxville Airport Traffic Control Tower.

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The record before us indicates that on May 26, 1978, Mr. Smith advised his supervisors that he intended to seek professional counseling for certain medical problems. On that date, he was disqualified from operational duties by his supervisor at the Knoxville Tower, and the following week he voluntarily took 1 week of sick leave. On June 5, 1978, Mr. Smith reported for duty at the Tower, but sometime that day his supervisor ordered him to return to sick leave status. On July 5, 1978, Mr. Smith again reported for duty, and he was given administrative duties to perform. Mr. Smith shortly thereafter entered the Second Career Program for air traffic controllers, and, upon completion of his training for another career, he was retired on disability on September 23, 1981.

In the meantime, Mr. Smith had filed a grievance with FAA claiming that his involuntary sick leave from June 5 to July 3 (159 hours) was improper and should be restored to his leave account. Although the grievance examiner sustained his claim, the FAA declined to implement the grievance examiner's recommendation since the agency found no violation of the Back Pay Act, 5 U.S.C. § 5596, which would authorize recredit of the involuntary sick leave.

Prior to his retirement, Mr. Smith filed a claim with our Claims Group for recredit of the 159 hours of sick leave. Our Claims Group questioned the agency's action in this case, and the FAA then decided Mr. Smith should have been "returned to duty" on administrative duties on June 15, 1978, the date he was permanently medically disqualified from performing operational duties. Therefore, the FAA agreed in December 1981 to restore 104 hours of sick leave to Mr. Smith's account. Since Mr. Smith had already retired on disability, the FAA merely notified the Office of Personnel Management (OPM) of additional sick leave hours to be used in computing Mr. Smith's annuity.

Mr. Smith has appealed the FAA's determination to our Office arguing that he should have been permitted to perform administrative duties beginning June 5, 1978, not from the date of permanent medical disqualification. Therefore, he seeks recredit for the remaining 55 hours of involuntary sick leave not previously restored by the agency. In addition, he argues that he is entitled to exhaust his sick leave account prior to retirement, citing pertinent FAA regulations, and he seeks to have his separation date changed to permit him to use the restored sick leave instead of crediting the sick leave to the computation of his retirement.

OPINION

Claim for recredit of leave

With regard to placing employees on involuntary leave, our decisions have long held that an employee may be placed on leave without the employee's consent when administrative officers determine, upon the basis of competent medical findings, that the employee is incapacitated for the performance of assigned duties. Jack L. Hamilton, 63 Comp. Gen. 372 (1984); 41 Comp. Gen. 774 (1962); and Claudia M. Ferguson, B-186197, July 28, 1976. However, where these medical findings are overturned, or there are no medical findings to support the administrative determination, we have held that the involuntary leave constitutes an unjustified or unwarranted personnel action. 39 Comp. Gen. 154 (1959); David E. Bright, Jr., B-188125, October 31, 1977; and B-170092, September 1, 1970.

In the present case, Mr. Smith returned to duty after 1 week of voluntary sick leave on June 5, but later that day his supervisor ordered him to return to sick leave status. The FAA's Second Career Program regulations, FAA Order 3410.11A, provide in paragraph 9c that an employee must be retained in a duty status provided the employee is willing and able to work and that if disqualified from active control duties, the employee should be assigned other duties. The grievance examiner found, and the FAA does not dispute, that there were administrative duties for Mr. Smith to perform during the period from June 5 through July 3. Therefore, the agency failed to follow its own regulations with regard to air traffic controllers entering the Second Career Program.

The FAA's regulations on involuntary leave, FAA Order 3600.4, paragraphs 11 and 38, require that for involuntary sick leave the agency action must be documented, while for involuntary annual leave the action is normally taken only in emergency situations. Based on the record before us, we find no medical evidence supporting Mr. Smith's supervisor's determination to place him on involuntary sick leave on June 5. The situation is analogous to our decisions in 39 Comp. Gen. 154 and B-170092, cited above, where there was no medical evidence supporting the agency's determination to place the employee on sick leave, and we found that placing the employee on involuntary sick leave was an unjustified and unwarranted personnel action.

There is also no evidence that retaining Mr. Smith in a duty status would cause an emergency situation. The grievance examiner questioned agency officials whether Mr. Smith presented or constituted a threat to Government property, to himself, or to fellow workers, and all agreed Mr. Smith did not present such a threat. The grievance examiner found, and the FAA does not dispute, that there were administrative duties for Mr. Smith to perform during the period from June 5 through July 3. Mr. Smith's supervisor admitted to the grievance examiner that, in retrospect, he should have assigned Mr. Smith administrative duties instead of ordering him to go on involuntary sick leave.

Therefore, we conclude that the FAA improperly placed Mr. Smith on involuntary sick leave on June 5, 1978, in violation of the guidelines set forth in agency regulations and our decisions. Such action constitutes an unjustified and unwarranted personnel action under the Back Pay Act, 5 U.S.C. § 5596 (1982), requiring corrective action. Since the agency has previously recredited 104 of the 159 hours of involuntary sick leave, the effect of our decision is to require that the agency recredit the remaining 55 hours of involuntary sick leave.

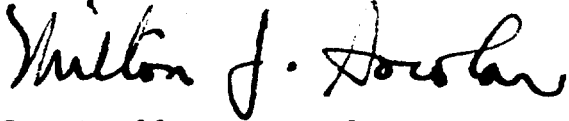
#### Use of restored leave

As noted above, the FAA previously restored 104 of the 159 hours of sick leave claimed by Mr. Smith. The agency's decision to restore this leave occurred in December 1981, after Mr. Smith had retired on disability. Instead of redetermining Mr. Smith's separation date to take into consideration his restored sick leave, the agency informed OPM of this additional sick leave to be used in computing his retirement annuity.

Mr. Smith argues on appeal that reporting the sick leave balance to OPM had no effect on his annuity, and he contends the action was contrary to agency regulations requiring the use of all sick leave prior to retirement on disability.

We note that under the FAA's regulations governing the Second Career Program, FAA Order 3410.11A, paragraph 9(e)(5), an employee who is eligible for disability retirement is "entitled" to use his accrued sick leave prior to separation. We have been advised by FAA officials that following completion of his second career training in 1981, Mr. Smith was allowed to exhaust his then-available sick leave balance (143 hours) prior to his separation for retirement on September 23, 1981.

Following agency regulations and practices, we conclude that the FAA is required to restore the full 159 hours of sick leave to Mr. Smith's leave account and permit him to exhaust this balance prior to separation for retirement. Therefore, the agency is required to adjust Mr. Smith's separation date and recompute his entitlements upon separation. The agency shall also notify OPM of his new retirement date.

*for*   
Comptroller General  
of the United States