

DECISION

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

FILE: B-221120

DATE: April 2, 1986

MATTER OF: Edgar K. Epp - Accrual of Annual Leave -
Temporary Disability Retired List

DIGEST:

A former member of the United States Navy who was separated from the service with disability severance pay (10 U.S.C. § 1212), has been a civilian employee of the government since 1960. At the time of civilian appointment, he was credited with 6 years, 6 months and 10 days of military years of service for annual leave accrual purposes (5 U.S.C. § 6303), which included 3 years, 7 months and 10 days of time spent on the Temporary Disability Retired List (TDRL). The TDRL time is not properly creditable for this purpose. Under 5 U.S.C. § 6303(a), and 5 U.S.C. § 8332(c)(1)(A), while military service is creditable, the term "military service" is defined in 5 U.S.C. § 8331(13) to mean "honorable active service." Since placement of a military member's name on the TDRL list removes his name from the active duty list, he is in a retirement status during that time. Therefore, the employee's civilian service computation date must be reestablished and his annual leave balance adjusted.

This decision is in response to a request from the Chief, Personnel Management Office, Bureau of Reclamation, Department of the Interior. The question involves the proper crediting of military service time for civil service annual leave accrual and retirement purposes in the case of Mr. Edgar K. Epp.

BACKGROUND

Mr. Epp entered onto active duty in the United States Navy on May 31, 1951. As a result of a service-connected injury, he was transferred to the Temporary Disability Retired List (TDRL), effective May 1, 1954. At that time, he had performed 2 years, 11 months and 0 days of active duty. On December 10, 1957, his name was removed from the

TDRL and he was separated from the Navy with disability severance pay authorized under 10 U.S.C. § 1212. His total military time upon separation, both active and time spent on the TDRL, was 6 years, 6 months and 10 days.

In 1960, Mr. Epp was appointed to a civilian position in the Federal Government. Shortly after his appointment, he was credited with the full 6 years, 6 months and 10 days military time and began to accrue annual leave at the rate of 6 hours a pay period. And, after having performed approximately 8 years and 6 months of civilian service, he began to accrue annual leave at the rate of 8 hours a pay period.

The agency contends that the time Mr. Epp spent on the TDRL (3 years, 7 months and 10 days), is not creditable in establishing an employee's service computation date for annual leave accrual, or for civil service retirement purposes. Mr. Epp, on the other hand, claims that the additional service credits he received were credited based on a decision of this Office which was noticed several years after he entered civilian service. He brought the decision to the attention of his personnel officer who agreed that it applied to his situation. He is unable to locate that decision.

The point made by the submitting official is that if this additional service time is properly creditable, Mr. Epp will soon be eligible for optional civil service retirement. If the additional service time is not properly creditable, then his service computation date would have to be reestablished. This, in turn, would require an adjustment of and a reduction in his annual leave balance as well as delaying his eligibility for optional retirement. The submission goes on to state that while agency research has failed to uncover a decision by this Office which would support Mr. Epp's position, a recent decision, B-212738, February 14, 1984 (published as Daniel F. Cejka, 63 Comp. Gen. 210 (1984)), while not specifically on point, tends to support the agency's view that time spent on the TDRL is not creditable service for leave and retirement.

DECISION

The law governing accrual of annual leave, which was in effect when Mr. Epp was appointed to a civilian position, was contained in 5 U.S.C. § 2062 (1958), and is presently codified as 5 U.S.C. § 6303 (1982). Since the governing laws have remained virtually unchanged in substance since then, all references will be to the current Code.

Section 6303(a) of Title 5, United States Code, provides in part:

"(a) * * * In determining years of service, an employee is entitled to credit for all service creditable under section 8332 of this title * * *."

Section 8332(c)(1)(A) of Title 5, United States Code, provides in part:

"* * * the service of an individual who first becomes an employee before October 1, 1982, shall include credit for each period of military service performed before the date of the separation on which the entitlement to an annuity under this subchapter is based * * *."

The term "military service" is defined in 5 U.S.C. § 8331(13) to mean "honorable active service in the armed forces."

Thus, for the provisions of 5 U.S.C. § 6303, military service time which is creditable to establish the rate at which an individual is authorized to accrue annual leave as a civilian employee is limited to "honorable active service." In this connection, 10 U.S.C. § 101(22) and (24), when read together, define military active service to mean,

"* * * full-time duty in the active military service of the United States. It includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school desig-

nated as a service school by law or by the Secretary of the military department concerned."

These are the governing basic provisions of law. Based on the sketchy information provided by Mr. Epp, we have researched our decisions in which the above-quoted provisions or their antecedent provisions were cited in an effort to locate the decision to which he referred. We have not found any decision which characterized time spent in an inactive or military retirement status, such as time spent on the TDRL, as constituting military active service as that term is defined in 5 U.S.C. § 8331(13), or in 10 U.S.C. § 101(22) and (24). In fact, the decisions which we did find indicated the contrary position.


In 31 Comp. Gen. 213 (1951), we considered, in part, the nature of a military member's status while his name is on the TDRL. We ruled therein that, notwithstanding the fact that the presence of his name on that list did not make his retirement permanent, since the placement of his name on that list removes his name from the active duty list, "temporary retirement" is "retirement." That ruling has been consistently followed. See 36 Comp. Gen. 628 (1957); 38 Comp. Gen. 268 (1958); and 47 Comp. Gen. 141 (1967). See also, Captain John B. Turpit, USMCR, Retired, B-206133, February 1, 1983, in which the language contained in 10 U.S.C. § 687(b)(4), limiting entitlement to readjustment pay was similarly construed.

Mr. Epp and the agency official who authorized the crediting of additional military time may have misread a decision in which the term "years of service" appeared, since that term is used in 10 U.S.C. § 1212, as well as 5 U.S.C. § 6303. If so, such a reading was in error. Under 5 U.S.C. § 6303, "years of service" is comprised of active military service and service as a civilian employee of the government. Since there is no provision of law stating that military retired time on the TDRL qualifies as active service for section 6303 purposes, it may not be so used. Therefore, since Mr. Epp had only served on active military duty a total of 2 years, 11 months and 0 days prior to his appointment as a civilian employee, that is the maximum military service time creditable to him for annual leave

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accrual purposes. Accordingly, his service computation date is to be reestablished and his annual leave balance adjusted as necessary.

With regard to civil service retirement, matters involving determinations of years of service creditable for that purpose come within the exclusive jurisdiction of the Office of Personnel Management (OPM). However, it is to be observed that since the definition of "military service" under 5 U.S.C. § 8331(13) is also used to establish civil service retirement years of service, we are not aware of any basis to conclude that OPM would permit the inclusion of TDRL time for that purpose. See, in this connection, 5 C.F.R. Part 831, Subpart C (1985).



Acting Comptroller General
of the United States