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

B-221229

February 11, 1986

The Honorable Peter W. Rodino, Jr.
House of Representatives

DO NOT MAKE THIS LETTER TO PUBLIC RECORDING

Dear Mr. Rodino:

We refer to your letter dated November 25, 1985, with enclosures, concerning Mr. [REDACTED] is an employee of the Department of the Army who seeks the review of a grievance decision approving a written reprimand he received based on a charge that he was absent without leave. We decline to disturb the conclusions reached in the grievance proceedings, since we have no authority to inquire into personnel grievance matters relating to disciplinary actions against individual employees, nor may we otherwise overrule administrative determinations placing employees in an absent-without-leave or a leave-without-pay status unless error is shown by a preponderance of the evidence.

Background

The documents enclosed with your letter indicate that in January 1984 Mr. [REDACTED] applied for "256 hours" of home leave on a standard leave application form for the period from "APR 27 0730 a.m." to "JUNE 12 1630 p.m.", for the purpose of taking a vacation trip to the United States from his duty station in Germany. This application was approved. In an earlier application he had requested a longer period of home leave, from May 1 to June 27, 1984, but his supervisors had not approved that request. The reason they gave him was that he could not be spared from his duties for the longer period because of operational requirements.

Mr. [REDACTED] traveled to the United States on April 27, 1984. Apparently, notwithstanding that the approved leave application indicated this was the first day of leave, it was agreed by Mr. [REDACTED] and his supervisors in advance that the next working day would be the first day of leave. April 27 was subsequently determined to be allowable traveltime.

Mr. [REDACTED] returned to his duty station in Germany on an airline flight that departed from New York on the evening of June 15, 1984. His supervisors then charged him with being

absent from duty without leave for the days of June 13, 14, and 15, 1984, and they gave him a letter of reprimand.

Mr. filed a grievance in the matter under the Department of the Army's grievance system. The decision reached in the grievance proceedings sustained the letter of reprimand and the determination that he had been absent without leave on June 14 and 15, 1984. The report of investigation prepared in the course of the grievance proceedings contained findings to the effect that discord had arisen between Mr. and his supervisors as the result of the denial of his initial request for home leave for a longer period, and that since his approved leave of absence had expired on June 12, 1984, he had overstayed his leave without giving his supervisors notice of his intentions in advance or providing them an explanation after the fact. The investigative report also contained findings to the effect that the supervisors had overlooked Mr. entitlement to leave-free traveltim for his return trip from the United States. As a result the report recommended that his absence on June 13 be excused for that reason. This report was approved in the grievance decision.

Mr. questions the correctness of the conclusions reached in the grievance proceedings that he was absent without leave on June 14 and 15, 1984. He argues that by approving "256 hours" of home leave on the leave application form, his supervisors granted him 32 full days of home leave in the United States, exclusive of Saturdays, Sundays, holidays, and traveltim. He suggests that under this rationale the allowance of traveltim in addition to home leave operated to extend his period of home leave from June 12 to June 13. He further suggests that June 14 and 15 should then be properly charged to necessary traveltim, and to home leave he had earned but had not been permitted to use. He seeks to have the absence without leave charge and the letter of reprimand set aside, and to be allowed payment of salary previously withheld for the period he was determined to be absent without leave.

Analysis and Conclusion

Procedures prescribed by regulation for the grievance initiated by Mr. do not provide for a review by our Office of the grievance decision. See 5 C.F.R. Part 771 and

Chapter 771 of Army Regulation 690-700. Moreover, we have long recognized that we otherwise have no general jurisdiction to inquire into personnel grievance matters relating to disciplinary actions against Government employees. See, e.g., Anita Blaicher, B-186095, April 26, 1976; and Burton H. Jaffe, B-183723, August 21, 1975; copies enclosed. Hence, we may not consider the question of whether the charge of misconduct and letter of reprimand should be affirmed or set aside. Our review of the matter is limited to the issue of whether he may be allowed payment of salary for the days he was determined to be absent without leave.

The statutes and regulations governing home leave provide that Government employees stationed overseas accrue days of home leave at prescribed rates based on their months of service abroad. 5 U.S.C. § 6305(a) and 5 C.F.R. §§ 630.604, 630.605. Nevertheless, employing agencies retain the authority to determine when and in what amount home leave will be scheduled. See 5 C.F.R. § 630.606(b); and Estelle C. Maldonado, 62 Comp. Gen. 545, 548-549 (1983). Home leave is earned and charged in 1-day increments. 5 C.F.R. §§ 630.604, 630.606(d). An employee who has been granted a period of home leave is entitled under statute to leave-free "time actually and necessarily occupied in going to or from a post of duty."

We have long held that determinations concerning the traveltimes of Government employees, and concerning the assessment of annual or home leave on account of delays, are primarily within the discretionary authority of the employing agency. See, e.g., 46 Comp. Gen. 425 (1966); 37 Comp. Gen. 848 (1958). We have also recognized that similar administrative discretion exists with respect to determinations concerning absence from duty without leave or leave without pay in the case of employees who are absent over leave without notice or justification. See 44 Comp. Gen. 274 (1964); 23 Comp. Gen. 960 (1944); and Anita M. Blaicher, B-186095, supra. Moreover, in such cases we will accept the findings reached by the responsible agency officials, or those reached in any ensuing grievance proceedings, unless there is a showing of error by a preponderance of the evidence. Burton H. Jaffe, B-183723, supra.

In the present case, therefore, we conclude that Mr. [redacted] supervisors acted within their authority in denying his request for a period of home leave ending on June 27,

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1984, even though he had apparently earned enough days of home leave in the course of his overseas service to cover that longer period. We further conclude, consistent with the findings reached in the grievance proceedings, that Mr. approved period of home leave ended on June 12 rather than on June 13. In his approved home leave application he plainly indicated that June 12 would be his last day of leave, and there is no evidence of any contrary arrangements made mutually in advance between him and his supervisors to substitute June 13 as the leave termination date. In addition, we have no basis to disturb the determination made in the grievance proceedings that Mr. could properly have been expected to report for duty on June 14, this determination also being predicated upon the facts presented in connection with that grievance.

Finally, we have no basis to allow Mr. payment of salary for the days he was administratively determined in the Army grievance proceedings to be in an absent-without-leave status. As indicated, the question of whether or not an employee who is late in returning to duty from a period of leave should be placed in a nonpay status is a matter primarily within the discretionary authority of the employing agency based on a reasonable evaluation of the particular circumstances involved. That is, we will interpose no objection if an agency excuses such a delay and grants the late employee additional paid leave for the additional absence, if a reasonable explanation for the delay is given and the circumstances would have made an advance application for additional leave impracticable. Alternatively, we will approve a withholding of salary if the agency places the employee in an absent-without-leave or a leave-without-pay status when, as in the present case, there is evidence that the employee was specifically advised in advance that additional leave could not be granted, and the subsequent unauthorized absence could not reasonably be explained or justified on the basis of extenuating circumstances.

We trust this will serve the purpose of your inquiry.

Sincerely yours,

Shelton J. Doster
Shelton J. Doster
Comptroller General
of the United States

Enclosures