



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Bernard M. Johnson - Approval of Sick Leave  
**File:** B-231477  
**Date:** October 7, 1988

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### DIGEST

Employee who was away from work in order to provide blood support, as needed, during his son's illness, claims sick leave should be granted instead of the annual leave actually granted by the agency. Employee's claim to restore his annual leave balance with unused sick leave is disallowed since agency did not abuse its discretion in granting sick leave only for those days when employee was actually donating blood or undergoing tests.

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### DECISION

#### BACKGROUND

Between August 27, and September 28, 1984, Mr. Bernard M. Johnson, an employee of the Interior Department's Bureau of Reclamation (Bureau), was away from work serving as a standby platelet donor for his son, who was undergoing a bone marrow transplant. Familial compatibility dictated the use of Mr. Johnson's platelets and he was required to be at the hospital each morning in case his son's condition worsened, thereby necessitating a platelet donation. Since Mr. Johnson worked in Ogden, Utah, and his son was hospitalized in Seattle, Washington, it was impossible for Mr. Johnson to return for work each day should his platelets not be needed in the morning. Mr. Johnson's platelets were never needed, however, and after September 28, his presence in Seattle was no longer necessary.

Prior to leaving for Seattle, Mr. Johnson requested from the Bureau permission to use sick leave for the first 40 hours (August 27 through August 31). That request was accompanied by a letter from a physician of the Johnson's stating that

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Mr. Johnson was needed in Seattle to give "life sustaining blood support" and it was approved by the Bureau. During his stay in Seattle, Mr. Johnson submitted additional requests for sick leave to cover the time spent away from work through September 28.

Upon returning to work, Mr. Johnson was informed that "documentation from your doctor, by days and hours, when you were actually undergoing medical treatment (i.e. while donating blood or undergoing tests) or any periods of time you were convalescing from the medical treatment" was required before any part of his absence would be credited against his sick leave balance. In response, Mr. Johnson presented the Bureau with a certificate from another doctor stating that he was under her professional care during the period in question. The Bureau rejected his arguments and assessed Mr. Johnson annual leave for his absence, including the 40 hours previously approved as sick leave prior to his departure.

The Bureau did subsequently grant Mr. Johnson 16 hours of sick leave for August 29 through 30 since he was required to donate a sample of his platelets and was recuperating on those days. However, from the record before us, it does not appear that the Bureau properly credited Mr. Johnson for the 16 hours of annual leave previously deducted for this period.

#### DISCUSSION AND ANALYSIS

The Civil Service regulation covering the availability of sick leave, 5 C.F.R. § 630.401, provides:

"An agency shall grant sick leave to an employee when the employee:

"(a) Receives medical, dental, or optical examination or treatment;

"(b) Is incapacitated for the performance of duties by sickness, injury, or pregnancy and confinement;

"(c) Is required to give care and attendance to a member of his immediate family who is afflicted with a contagious disease; or

"(d) Would jeopardize the health of others by his presence at his post of duty because of exposure to a contagious disease."

Implementation of this regulation is an administrative matter and our Office will not review or revise an agency determination with respect to sick leave in the absence of an abuse of its authority. See e.g., 58 Comp. Gen. 661, 663 (1979).

Mr. Johnson argues that he is entitled to sick leave on the basis of 5 C.F.R. § 630.401(a). He asserts that acting as a standby donor for his son is a form of medical examination or treatment within the meaning of that provision. In support of his argument, Mr. Johnson submitted medical certificates by his physicians to the Bureau. Mr. Johnson argues that the Bureau abused its discretion by refusing to accept the medical documentation submitted on his behalf and by relying on erroneous information in reaching its conclusion.

The Bureau position is that the time spent by Mr. Johnson in Seattle as a standby platelet donor does not fall within the meaning of 5 C.F.R. § 630.401(a) as time spent by an employee while receiving "medical, dental, or optical examination or treatment." In so concluding, the Bureau relies on language from the Civil Service Commission quoted with approval in one of our decisions:

"The [Civil Service] Commission stated that it 'has consistently interpreted this regulation [5 C.F.R. § 630.401] to mean that sick leave is appropriate for use only when the circumstances specifically and literally meet the criteria contained in the regulation.'

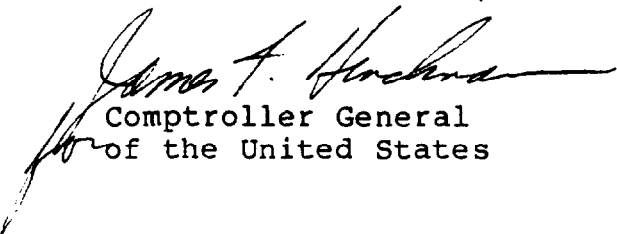
"Moreover, the Commission stated that the generous amounts of annual leave granted to Federal employees were authorized by law with the understanding that they were meant for more than vacations, i.e., annual leave was also to be used for a variety of personal and emergency reasons. Such reasons can include transporting member [sic] of the family to a doctor or hospital for emergency treatment; staying home with a member of the family who is ill, but **not** with a contagious disease; being tired or fatigued because of loss of sleep due to any one of a number of causes, ranging from care of an ill member of the family to worry over family problems." 55 Comp. Gen. 183, 185 (1975).

Although 55 Comp. Gen. 183 dealt specifically with the claim of an employee who missed work due to fatigue from caring for a family member, the language quoted above

clearly indicates that sick leave is not available for time spent by an employee in caring for an ill, albeit non-contagious, member of the family. This interpretation was elaborated further in William Stuart - Approval of Sick Leave, B-195042, Aug. 6, 1979.

In William Stuart, an employee claimed sick leave for time spent attending his wife during her labor and delivery under the Lamaze method of prepared childbirth. His request was supported by medical certification, stating that the employee "must be present for the entire process." We denied the employee's claim for sick leave, drawing a distinction between time spent as a care giver for which annual leave is appropriate and time spent as a care recipient for which sick leave is appropriate.

Although the circumstances surrounding Mr. Johnson's request are compelling, in light of our earlier decisions we cannot say the Bureau abused its discretion in denying his sick leave request. Except for the 16 hours of annual leave the Bureau apparently failed to restore for August 29 and 30, there is no basis upon which to restore Mr. Johnson's annual leave balance with unused sick leave. Therefore, his claim for such restoration must be disallowed.

  
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of the United States