



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Jerry L. Donathan - Temporary Appointments -
Entitlement to Military Leave

File: B-232438

Date: February 24, 1989

DIGEST

An employee, who served under two temporary appointments each of which was for a period of less than 1 year, claims entitlement to military leave. The claim is denied since the military leave statute limits military leave to employees serving under permanent or temporary indefinite appointments. 5 U.S.C. § 6323(a) (1982). Temporary indefinite appointments are those for periods of 1 year or more.

DECISION

The issue in this decision concerns the entitlement of a civilian employee to military leave where he was employed under temporary appointments of less than 1 year's duration. We hold that military leave is not available to the employee.

This decision involves a Department of the Army employee, Mr. Jerry L. Donathan, who was first employed by the McAlester Army Ammunition Plant on May 18, 1987, under a temporary appointment (Summer) not to exceed September 24, 1987.^{1/} On September 21, 1987, that appointment was extended for an additional period from September 25, 1987, not to exceed September 22, 1988.

The Army questions whether Mr. Donathan may accrue and use military leave during this period of temporary appointments. The Army acknowledges that in prior decisions our Office has

^{1/} The request was submitted by the Director of Finance and Accounting, Department of the Army.

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denied military leave to employees with appointments of less than 1 year. However, the Army points out that there is new authority granted by the Office of Personnel Management which permits agencies to make and extend temporary limited appointments.^{2/} Therefore, the Army questions whether Mr. Donathan is entitled to military leave since his appointment was extended to more than 1 year without a break in service.

The statute governing military leave, 5 U.S.C. § 6323(a) (1982), provides that "permanent or temporary indefinite" employees are entitled to military leave. We have long held that temporary appointments for periods of 1 year or more may be considered temporary indefinite appointments for the purposes of the military leave statute but appointments for periods of less than 1 year do not qualify for military leave. 54 Comp. Gen. 999 (1975); 46 Comp. Gen. 72 (1966); B-173997, June 19, 1972. The distinction between appointments for periods of 1 year or more and those for periods of less than 1 year is drawn from the legislative history of the amendments to the military leave statute, which we quoted in B-173997, supra.

The Army suggests that by combining Mr. Donathan's two appointments, he served in excess of 1 year without a break in service and thereby qualified for military leave. We disagree since we have held that temporary appointments for less than 1 year, even if extended from time to time, do not entitle the employee to military leave. B-128761, Aug. 9, 1956. Moreover, the new appointment authority which allows agencies to extend temporary limited appointments in increments of up to 1 year for up to 4 years does not change the result. The new authority does not alter the statute governing military leave which limits the accrual and use of military leave to permanent employees and temporary indefinite employees serving under appointments of 1 year or more.

Accordingly, we find no basis to allow Mr. Donathan to accrue and use military leave while serving under these temporary appointments.


for Comptroller General
of the United States

^{2/} See Federal Personnel Manual (FPM) Letter No. 316-21, Jan. 2, 1985.