

LS-4110

Subject

322

1963

SECURITY INFORMATION

OGC HAS REVIEWED.

7 May 1953

MEMORANDUM FOR: Deputy Director (Administration)

FROM: Office of General Counsel

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SUBJECT: "Compassionate Leave" - Travel Expenses of [redacted]

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REFERENCE: Memorandum dated 28 April 1953 from Chief, PR to DD/A

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1. [redacted] a staff employee, arrived for duty at her field station on 18 September 1950 and served continuously until 31 December 1951. At that time she was authorized by cable dated 31 December 1951 to return to the United States (with the Government providing the transportation) for a period of two or three weeks on "Compassionate Leave", due to a death in her family. Subject employee returned to her overseas duty station on 21 January 1952 and said travel in connection with this trip was made at Government expense. Since returning she has served continuously for fifteen months and now would like to return to this country for "home leave". The following request is quoted verbatim in the interest of clarity from the memorandum requesting that travel expenses incurred on the "Compassionate Leave" be considered an expenditure under [redacted]

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"It is therefore requested that the DD/A exercise his discretionary powers under provisions of [redacted] and authorize a write-off of [redacted] travel from the field station to the United States and return in 1952 as the equivalent of home leave. Thereafter, a new tour of duty will be considered to have begun at the time of [redacted] return to the field station on 21 January 1952 and that for purposes of home leave, she will be considered to have completed the necessary tour of duty as of 21 January 1954...."

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2. The above quoted language sets forth two questions which must be resolved; to wit, can home leave be granted retroactively and, two, are travel expenses incurred by an employee on "Compassionate Leave" reimbursable under [redacted]

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3. In our opinion the expenditure made in relation to subject employee's travel to and from the continental limits of the United States in January of 1952 cannot be considered a reimbursable expense under the authority of [redacted]. Such an expense though occasioned by an administrative error, is not the type contemplated as being authorized under this section of the [redacted]

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[redacted] (31 Comp. Gen. 191). The authority to use unvouchered funds was not granted this Agency to relieve financial burden imposed by the misinterpretation of regulations or by reason of unjustified determinations. See CIA Notice [redacted] dated 6 August 1952.

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4. In the instant case, there existed no legal obligation on the part of the Government to make the subject disbursement. The benefits in fact were purely personal in nature and inured to the individual. As further evidence of the fact that no benefit accrued to the Government we look to the requesting cable wherein it is stated that the employee be returned for leave and "for registry conference", and find that the cable reply denied the request for "registry conference" with the following verbage. "Sorry, cannot justify TDY". Notwithstanding the fact that the employee relied on a determination from higher authority, i.e., a cable from Washington, a general rule long-established in Government is that an employee receiving funds which were improperly authorized and paid cannot retain the benefits so authorized and paid.

5. In considering the legality of "home leave" [redacted]

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[redacted] Consequently, to approve the request to consider Subject's travel in 1952 as the "equivalent of home leave" is legally improper since at that time the employee had only fifteen months service abroad. It is unnecessary to consider further the question of retroactive home leave other than to point out that the term "home leave" technically is a misnomer since this Agency's leave authority is governed by the "Annual and Sick Leave Act of 1951", Public Law 253, 82nd Congress, and the term "home leave" used with respect to this Agency does not have the same connotation as it has in the Foreign Service. Nowhere in the statutory authority of CIA nor in the regulations thereunder can authority be found for "Compassionate Leave." There is, however, a provision in [redacted] which states that periods of annual

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leave granted to an employee to return to the United States at his personal expense for the sole purpose of meeting an emergency will not constitute a break in said employee's continuous service abroad. However, time spent by Subject away from her duty station including travel time, must be considered annual leave.

6. In accordance with the above, it is our opinion that the reimbursement by the Government to the employee for the cost of travel incurred in connection with her trip to the United States and return in 1952 was not in accord with law or regulations. It will be necessary that she meet the requirements of [REDACTED] pertaining to eligibility for home leave in that the employee must have accrued annual leave to carry her in a pay status while in the United States for at least thirty calendar days.

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[REDACTED]

Assistant General Counsel

Attachment - Subject correspondence

OGC/EPH:imm

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Orig & 1 - Addressee
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ORIGINAL DOCUMENT MISSING PAGE(S):

Attachment