

Management

23 May 1960

Legal Staff

Charging of Leave for Travel of Overseas Employees.

1. A recent opinion of the Comptroller General to this Agency, dated 19 March 1960, (No. B-93365) provided an interpretation of the effect on the continuity of "continuous service abroad" when overseas employees took certain types of leave in the United States. The questions concerned an employee who:

(a) Returned to the United States for purposes of official consultation and was granted an interim period of either annual or sick leave;

(b) Returned to the United States at Government expense on sick leave;

(c) Returned to the United States for a period of annual leave at his own expense to meet a personal emergency.

2. While the opinion of the Comptroller clarified the effect of such leave on the continuity of "continuous service abroad," it did not touch the collateral question of the assessment of leave for travel time incident to the above situations. This is now under consideration by the Foreign Service in drafting appropriate regulations, and the question has been referred to this Agency for comment and possible advice. Since we are presently considering an amendment to Administrative Instruction No. 50-5, "Time, Leave and Pay," (Note proposed Section 5, "Home Leave from Overseas Posts") we wish to call your attention to this question with the following comments.

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4. To our mind, the first case does not present a problem. When an employee is returned to the United States for consultation under official orders, the travel is related to his duty, and the grant of a period of interim leave in the United States would not require a forfeiture of leave for the transit period going from and to his overseas post. (Any travel within the United States related to his interim leave would not be controlled by P.L. 110, and would be subject to standard leave practices otherwise applicable within the United States.)

5. In situation (b), the employee is returned to the United States on sick leave at governmental expense. Since the assessment of sick leave is not necessarily inimical to payment of travel and per diem expenses, there is no reason why sick leave could not be charged at the date of departure rather than at the date of arrival in the United States. This, however, is for policy determination.

6. The real problem with which we are confronted is contained in situation (c) where the employee returns at personal expense for a personal purpose. Here the interest of the Government is clearly subordinate to that of the individual and there is no obligation on the part of the Government to present the employee with a gratuitous grant of leave during the period of travel. Since the obligation to exclude travel time from leave applies only to home leave, there is no technical objection to charging leave for travel in this case.

7. I have discussed this matter with Mr. Dayson Hall of the Personnel Section of the Foreign Service, and we would appreciate being informed of any policy determination in order that we may advise him of the Agency approach. If you find it necessary, we can arrange a conference with the Foreign Service. Mr. Hall said it was his understanding that OGA is considering travel time without assessment of leave if the employee so elects, but the employee will then be required to begin a new accumulation of leave on return to post. We have not discussed this with OGA, but if they intend to require the employee to reaccumulate the basic amount of leave needed for entitlement to home leave without credit for a previously unused portion, it would certainly appear inadvisable to follow their motions. In the opinion cited above, the Comptroller has indicated that it is permissible to grant such annual leave provided the employee then is required to accumulate an amount equivalent to that actually used before he can again return to the States under Section 5. (a) (3) (A) of P.L. 110.

8. This is supplementary to our previous memorandum dated 6 April 1950, but it reinforces our suggestion to delete the description of leave in the above cases as "home" leave. - *not a legal decision - in Admin. Instr. 30-05.*

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