



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

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D-127318

May 1, 1973

Mr. Gilbert H. Dawson
Special Disbursing Agent
National Security Agency
Fort George G. Meade, Maryland 20755

Dear Mr. Dawson:

We refer to your letter of January 18, 1973, Serial: R41/0085F, by which you request our decision whether Mr. Joseph Mitola III, an employee of the National Security Agency, may have part of his absence from duty from June 24 to August 4, 1972, while he was attending ROTC advanced camp, charged to annual leave rather than leave without pay.

You say that Mr. Mitola was not allowed the annual leave available to him during the period he was participating in ROTC advanced camp in view of the decision in 35 Comp. Gen. 531 (1956). You now request our advice as to whether that decision under which ROTC cadets are denied entitlement to annual leave with pay from civilian positions while participating in summer camp is still controlling since the Dual Compensation Act in force at the time that decision was rendered and which was cited therein as the controlling provision of law has been superseded by the Dual Compensation Act of 1964, now 5 U.S.C. 5533. As you indicate current statutory provisions do not limit the compensation which may be received by an individual holding military and civilian offices concurrently except with respect to retired military officers as provided in 5 U.S.C. 5532. This is so because the dual compensation provision of 5 U.S.C. 5533 now applies only to the holding of two civilian positions under the definition of position as contained in 5 U.S.C. 5521(2).

However, it was held in 46 Comp. Gen. 400 (1966) that the enactment of the Dual Compensation Act of 1964 did not change the longstanding rule that active military service is incompatible with concurrent Federal civilian service. See also 49 Comp. Gen. 444 (1970). On the other hand ROTC field training under 10 U.S.C. 2109, which is here involved, is not considered active duty in the armed forces. 45 Comp. Gen. 103, 111 (1965). See also Allison v. United States, 426 F. 2d 1324 (Cir. 1971) in which the Court of Appeals held that ROTC field training is not active military service.

Since field training performed by ROTC cadets is not active military service such duty is not subject to the incompatibility rule as presently

[Employee May Use Annual Leave
While Attending ROTC
Camp.]

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stated which prohibits only the performance of service as a civilian by an individual who is subject to active military service. We find no reason to extend the incompatibility rule to ROTC cadet field training since such training is distinct in many respects from active military service. Of particular note is that ROTC cadets are not subject to the Uniform Code of Military Justice. 10 U.S.C. 802; Allison v. United States, supra.

Finally, we do not consider that the performance of ROTC field training involves the holding of a civilian position for purposes of 5 U.S.C. 5533(a) which prohibits the receipt of basic pay for more than one position for more than an aggregate of 40 hours in any one calendar week.

For the reasons stated Mr. Mitola may be allowed any annual leave available to him during the period he was performing field training as an ROTC cadet. Your submission is answered accordingly.

Sincerely yours,

Paul G. Deabling

For the Comptroller General
of the United States