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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548



OFFICE OF GENERAL COUNSEL

IN REPLY REFER TO: B-195687 (RJH)

August 29, 1979

Patrick F. Smith, Assistant Counsel
National Treasury Employees Union ^{Post}
1730 K Street, NW., Suite 1101
Washington, D.C. 20006

available to public reading room

Dear Mr. Smith:

We refer to your letter of July 31, 1979, on behalf of Mr. Robert Dawson, an employee of the Internal Revenue Service, Des Moines District. You state that Mr. Dawson was forced to pay for medical certificates substantiating visits to his doctor, and that such action constitutes an unwarranted personnel action. Therefore, you request that Mr. Dawson be reimbursed the monies he was required to expend in accordance with the provisions of 5 U.S.C. § 5596 (1976).

The following information is provided in lieu of a formal decision at this time.

Civil Service Commission (CSC) regulations (now Office of Personnel Management) require that an agency may grant sick leave only when supported by administratively acceptable evidence. In addition, an agency may require a medical certificate for an absence of more than 3 workdays, or for a lesser period when it is determined to be necessary. Thus, this requirement is entirely discretionary with the agency. 5 C.F.R. § 630.403 (1978).

You base your claim on behalf of Mr. Dawson on the Back Pay Act, 5 U.S.C. § 5596. Regulations promulgated by the CSC in title 5, Code of Federal Regulations, define "an unjustified or unwarranted personnel action" as:

"* * * an act of commission (i.e., an action taken under authority granted to an authorized official) or of omission (i.e., nonexercise of proper authority by an authorized official) which it is subsequently determined violated or improperly applied the requirements of a non-discretionary provision, as defined herein, and thereby resulted in the withdrawal, reduction, or denial of all or any part of the pay, allowances,

or differential, as used here, otherwise due an employee. The words 'personnel action' include personnel actions and pay actions (alone or in combination)." (Emphasis added.) 5 C.F.R. § 550.802(c) (1978).

The language of the Back Pay Act was intended to provide a monetary remedy for wrongful reductions in grade, removals, suspensions, and other unwarranted or unjustified actions affecting pay and allowances that could occur in the course of reassignments and change from full-time to part-time work. United States v. Testan, 424 U.S. 392, 405 (1976), motion denied, 425 U.S. 957 (1976). To qualify as a "personnel action," the agency's action which is under attack must result in a reduction of a job grade or level. Donovan v. United States, 580 F.2d 1203 (3d Cir. 1978).

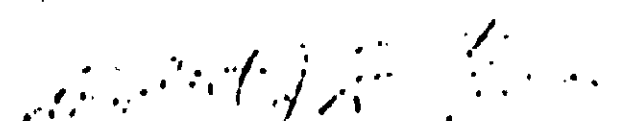
Accordingly, as the language of the statute, the regulations, and the court cases indicate, only those actions by an agency affecting an employee's pay and allowances constitute "an unjustified or unwarranted personnel action," which would warrant reimbursement. Compensation for medical expenses would not be applicable.

If, after considering the foregoing, you wish to file a claim on Mr. Dawson's behalf, it should be addressed to the Director, Claims Division, U.S. General Accounting Office, Washington, D.C. 20548. A claim filed by a representative on behalf of a claimant must be supported by a duly executed power of attorney or other documentary evidence of the agent's or attorney's right to act for the claimant. 4 C.F.R. §§ 1.3 and 31.3 (1978). Further, action will generally be expedited if claimants file their claims initially with the administrative department or agency out of whose activities they arose. 4 C.F.R. § 31.4 (1978).

Sincerely yours,

ROBERT L. HIGGINS
Assistant General Counsel

By:


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