



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

B-179252

40105
October 24, 1973

Mrs. Mildred Bauman Cannon
731 E. Homestead Road
Sunnyvale, California 94087

Dear Mrs. Cannon:

We refer to your letter of July 1, 1973, forwarded to this Office by Senator Mike Mansfield, requesting reconsideration of the February 26, 1973 action of our Transportation and Claims Division whereby your claims for retirement annuity and recredit of leave incident to your prior Federal service were disallowed. In accordance with your request we have reviewed the entire file relative to your claim.

The record indicates that you were employed with several Federal agencies during the period from May 12, 1941, until September 15, 1946, at which time you resigned from a Foreign Service appointment with the Department of State. At the time of your resignation you were paid a lump sum for 88-1/2 days of annual leave that you had accrued. On December 13, 1946, you were employed by Headquarters, U.S. Forces, Vienna, Austria, but resigned on December 18, 1946, due to illness prior to traveling to Austria to take up the duties of the position to which you were appointed. You reentered Government service on April 17, 1967, at which time you were given a career reinstatement with the Defense Communications Agency (DCA) and you remained with DCA until your resignation on July 26, 1968. At the time of that resignation you were paid a lump sum for your accrued annual leave of 178 hours. Subsequently, you were given a career appointment as a City Carrier (Sub) with the United States Post Office in San Jose, California, effective October 23, 1968. You resigned from that position on October 29, 1968, because you were "physically unable to do the job."

You state that prior to your resignations in both 1946 and 1968 you were not given the opportunity to use your annual leave before your separation was effected and that you were therefore forced to accept the lump-sum leave payments. You believe that you should have been allowed to use your leave prior to separation and now seek to have the period of time covered by the lump-sum leave payments credited to you as creditable service for retirement purposes.

The statutory provisions relating to leave benefits for Federal employees are codified in chapter 63 of title 5, United States Code. Section 6302(d) of title 5 provides as follows:

[Disallowance of Annuity and Recredit of Leave]

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"(d) The annual leave provided by this subchapter, including annual leave that will accrue to an employee during the year, may be granted at any time during the year as the head of the agency concerned may prescribe."

While we are not aware of the circumstances under which you were not allowed to use your leave "early in the 1968 leave year" as you state, we have consistently held that under the above-cited section it is clear that discretion is vested in the head of the various departments and agencies to prescribe when annual leave is to be granted. Thus there is no basis under which this Office would have the authority to question administrative determinations regarding the granting of annual leave to you during the years in question. Further, we point out that under the provisions of 5 U.S.C. 5551 an employee is entitled to payment for accumulated and accrued annual leave in a lump sum. It has consistently been held that the authority to make such lump-sum payments precludes agencies from granting employees annual leave in kind prior to separation when it is known in advance that the employee is to be separated from the service. 24 Comp. Gen. 511 (1945); 26 id. 119 (1946).

As to your request that the annual leave for which you were given a lump-sum payment be credited to you as creditable service for retirement purposes, paragraph S3-4 of subchapter S3 of FPM Supplement 831-1 relating to retirement provides with respect to periods of employment included as creditable service:

"1. Terminal leave. A lump-sum payment covering accrued and accumulated leave is not considered pay for retirement purposes, and no credit is allowed for the period covered by the payment."

There is therefore no authority under which the leave time for which you were given lump-sum payments at the time of your resignations in 1946 and 1968 may be credited to you as Federal service for retirement purposes.

The information you have furnished further indicates that on June 10, 1971, you applied for disability retirement benefits with the Civil Service Commission. By letter dated July 12, 1972, the Civil Service Commission Board of Appeals and Review affirmed the action of the Bureau of Retirement, Insurance, and Occupational Health in disallowing your claim for disability retirement for the reason that your application had not been filed prior to your separation from the service or within one year

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thereafter as required by section 8337(b) of title 5, United States Code. In a letter dated October 4, 1972, you sought review of that decision by this Office.

As was pointed out in the letter to you from our Transportation and Claims Division, the Civil Service Commission has been given the responsibility for the administration of civil service retirement which includes the authority to adjudicate all claims arising thereunder. 5 U.S.C. 8347(a), (b). In view thereof this Office cannot review the determination of the Commission with respect to annuity entitlements. We note, however, that the provisions of 5 U.S.C. 8337(b) are clear and unambiguous with respect to allowing claims for disability retirement only if an application for such is filed with the Commission before the employee is separated from the service or within one year thereafter. An exception is permitted only if the employee is mentally incompetent at the time of separation, or becomes so within one year thereafter. Therefore the determination of the Commission that your application was not timely filed appears to have been correct.

You are also seeking compensation for 57 hours of sick leave which you claim you had to your credit at the time of your separation from DCA on July 26, 1968, but which was not reccredited to you at the time you were employed with the Post Office Department on October 23, 1968. Effective July 1, 1971, the Post Office Department became the United States Postal Service. The law which created the Postal Service gives it the authority to settle and compromise claims against it (39 U.S.C. 401(8)). In view of this broad authority, the matter concerning your claim for sick leave is no longer within our jurisdiction but is within the jurisdiction of the Postal Service. The papers you have furnished include copies of the settlement issued to you by the Postal Service with respect to this claim. Any further appeal of that settlement must be filed with the Postal Service.

For the reasons stated the previous disallowance of your claims must be sustained. The materials pertaining to your application for disability retirement are returned pursuant to the request in your letter of June 28, 1973.

Sincerely yours,

Faul G. Dembling

For the

Comptroller General
of the United States

Enclosure