



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

B-177357

April 16, 1973

Lieutenant Colonel H. W. Utman, USAF
Accounting and Finance Officer
Defense Supply Agency
666 Summer Street
Boston, Massachusetts 02210

30609

Dear Colonel Utman:

We refer to your letter of October 11, 1972, reference DCRB-FA forwarded here by Defense Supply Agency, Headquarters, dated October 27, 1972, reference DSAH-CFF, requesting an advance decision for waiver of 240 hours advanced sick leave granted to Mr. Joseph Pulzane, former employee of DCASR-Boston, Defense Supply Agency, for the period October 8, 1971, through November 23, 1971.

You state that Mr. Pulzane was absent from his assigned duties from September 2, 1971, through December 17, 1971. Thereafter the employee returned to his assigned duties from December 20, 1971, through June 23, 1972, at which time he voluntarily retired.

Mr. Pulzane states, however, that his retirement was necessitated by an operation and illness and that he chose voluntary retirement instead of disability retirement because he met the age requirement and had sufficient service to his credit to enable him to do so and because choosing voluntary retirement would have expedited his claim.

The record contains a certificate from Mr. Pulzane's doctor which is dated June 6, 1972, and which is to the effect that because of the nature of Mr. Pulzane's illness, it would be in the employee's best interest to retire from Government service.

Apparently at the time of Mr. Pulzane's retirement, your office treated the advanced sick leave to Mr. Pulzane as an indebtedness and proceeded to collect the debt from the amount due Mr. Pulzane in his retirement account. Upon the request by Mr. Pulzane for waiver of the 240 hours advanced sick leave a question arose as to the proper interpretation of the pertinent regulations and whether or not the short return of Mr. Pulzane to duty abrogated any possibility of waiver of the advanced sick leave.

[Request for Waiver ^{of} Advanced Sick Leave Granted to
Former Employee]

715-835/092234

B-177357

Section 630.209 of title 5 of the Code of Federal Regulations is to the effect that any employee who is indebted for unearned leave and who dies or retires for disability or is separated or resigns on such account is not required to refund the amount of the indebtedness. The basis of separation is a matter of fact to be determined by the employee's agency on medical evidence acceptable to it.

We have recognized in our decisions that an employee might choose to retire for age and service even though he may otherwise be entitled to retire for disability. See B-171883, March 15, 1971, copy enclosed.

In the instant case we are of the opinion that the short return of Mr. Pulzane to duty does not negate a determination that he actually separated because of disability. Therefore, we see no objection if your agency determines that the separation of Mr. Pulzane was because of disability. In such event the charge against his retirement account should be removed and refund authorized of any amounts withheld in partial liquidation of the indebtedness.

Sincerely yours,

Paul G. Dembling

For the Comptroller General
of the United States

BEST DOCUMENT AVAILABLE