

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON 25

B-147031

February 5, 1962

Honorable J. S. Gleason, Jr.
Administrator, Veterans Administration

Dear Mr. Gleason:

On January 9, 1962, you requested that we reconsider our decision of September 11, 1961, B-147031, to you, concerning the entitlement of certain employees of the Veterans Administration to use the home leave they had earned while stationed in your Regional Office at Manila, Philippines, after their return to the United States when it was not contemplated that they would return to Manila.

Home leave was authorized United States citizens employed in your Manila office by the act of July 28, 1959, 73 Stat. 265 (Public Law 86-116) which amended Title 38 U. S. Code by the addition of section 235. Subsection (b) of that section provides:

"(b) Personnel of the Veterans' Administration who are United States citizens and are assigned to the Republic of the Philippines by the Administrator of Veterans' Affairs may be granted leaves of absence in the United States, by the Administrator of Veterans' Affairs, similar to that provided by section 203(f) of the Annual and Sick Leave Act of 1951 (5 U.S.C. 2061(f))."

Your question involves home leave earned under that provision of law and not home leave earned after that provision had been superseded by section 401 of the Overseas Differentials and Allowances Act, 74 Stat. 799 (Public Law 86-707) which, in pertinent part, amended section 203(f) of the Annual and Sick Leave Act of 1951, 65 Stat. 679, 5 U.S.C. 2062(f), to extend the grant of home leave to overseas employees of all departments and agencies covered by that act under regulations of the President.

Under the authority of the act of July 28, 1959, the former Administrator issued regulations which allowed employees to use the home leave they had accumulated overseas upon their return to the United States for further assignment with the Veterans Administration even though they were not to return to Manila. Our decision of September 11, held that regulation to be invalid so far as it so authorized employees to use home leave. You contend that such

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regulation was within the scope of the regulatory authority granted the administrator in the act of July 28, 1959, since that act required only that the home leave granted be similar to that provided by section 203(f) of the Annual and Sick Leave Act of 1951, which act, you say, does not restrict the use of home leave to employees who are to return overseas.

The question, then, is whether home leave which may be used by an employee after a tour of overseas service without regard to further overseas assignment is similar to the home leave provided by section 203(f) of the 1951 act.

On July 28, 1959, section 203(f) provided: *of the Annual & Sick Leave Act*

"(f) Officers and employees in the Foreign Service of the United States under the Department of State may be granted leave of absence, without regard to any other leave provided by this chapter, for use in the United States, its Territories or possessions, at a rate equivalent to one week for each four months of service outside the several States and the District of Columbia. Such leave may be accumulated for future use without regard to the limitation in subsection (c) of this section but no such leave which is not used shall be made the basis for any terminal leave or lump-sum payment."

Although that provision does not specifically prohibit the grant of home leave to returning employees who are not scheduled for another tour of duty overseas the legislative history of that act and the legislative histories of other acts dealing with home leave clearly limit the purpose for which home leave is granted. In that connection, the following statement is found on page 7 of S. Rept. No. 546, on S. 832, 82d Congress, which was the basis for the Annual and Sick Leave Act of 1951, enacted as Title II of S. 1046, 82d Congress (Public Law 233):

"Paragraph (f) provides for home leave for employees of the Foreign Service at the rate of 1 week for each 4 months of service abroad. This allowance may be accumulated for future use, but it is not to be the basis for terminal leave or lump-sum payment. The committee intends that a leave of absence under this provision be granted only during one or between two consecutive assignments abroad. It is intended further that any violation of this concept on the part of any employee in the Foreign Service should result in requiring a refund of the full

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amount of salary received by such employee for the entire period of such leave improperly used. The committee expects the Department of State to adopt appropriate procedures to see that this intent is properly carried out."

Other statements concerning the purpose and use of home leave which imply that home leave is to be used only between tours of duty overseas are to be found in the legislative history of the Foreign Service Act of 1946, 60 Stat. 999, 22 U.S.C. 801, et seq.--see pages 10, 138 and 139 of H. Rept. No. 2508, 79th Congress, to accompany H.R. 6967; page 10 of S. Rept. No. 1731, 79th Congress, to accompany S. 2451; page 9716, of the Congressional Record for July 20, 1946--and in the legislative history of the Overseas Differentials and Allowances Act, 74 Stat. 792--see page 27 of H. Rept. No. 902, 86th Congress, to accompany H.R. 7758; page 13 of S. Rept. No. 1647, 86th Congress, to accompany H.R. 7758.

Our opinion is that home leave authorized by section 203(f) of the Annual and Sick Leave Act of 1951, as well as such leave authorized by other acts of Congress, above, was to be used only between tours of duty overseas and not upon completion of overseas duty. Therefore, so far as the Veterans Administration authorized the use of home leave after an employee's return from Manila for assignment in the United States it did not authorize home leave similar to that provided in section 203(f) of the Annual and Sick Leave Act of 1951. Also, in this instance, we find no proper basis upon which our Office could authorize existing commitments to be fulfilled.

For the reasons stated above we affirm our decision of September 11, 1961, to you.

Sincerely yours,

JOSEPH CAMPBELL
Comptroller General
of the United States

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Attachment to DD/S 69-1853

Proposed revision to [REDACTED]

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PERSONNEL [REDACTED]

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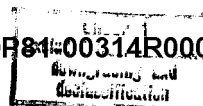
30. LEAVE

d. TIME BETWEEN ASSIGNMENTS FOR TRAVEL AND LEAVE.

- (1) Personnel who return to the United States for home leave between tours of duty abroad shall be governed by the following policies:
- (a) The maximum time which will be authorized for travel, consultation, and leave between two different assignments or between two successive tours at the same post will normally be 60 calendar days, regardless of itinerary or mode of travel.
 - (b) Any TDY en route, or in conjunction with home leave, which exceeds the normal five-day consultation period will not count against the 60-day limitation, but such TDY will be held to a minimum.
 - (c) Individual exceptions to the 60-day limitation may be granted by the Operating Official or Head of Independent Office concerned whenever circumstances warrant. A request for exception must include substantiating information and be forwarded with the request for travel orders.
 - (d) If circumstances necessitate, Heads of Career Services, Operating Officials, and Heads of Independent Offices may, after coordination with the Director of Personnel, establish on a temporary basis for personnel under their jurisdiction a maximum time between assignments which is more restrictive than the 60-day limitation specified in subparagraph (1) above.

Exceptions may be approved by the Director of Personnel provided that the employee has served at least 18 months in a foreign area and the Deputy Director concerned certifies that the exception is in the Agency's interest.

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- (2) Personnel who are reassigned from a duty post abroad to Headquarters for a tour prior to returning overseas may be granted home leave of not more than 15 workdays. Exceptions may be approved by the Director of Personnel upon certification by a Deputy Director that conditions such as the following exist:
- (a) Additional rest and recuperation is needed due to service under particularly difficult circumstances;
 - (b) An exceptional delay of home leave occurred due to operational requirements abroad; or
 - (c) Serious personal or family problems warrant extended home leave.

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