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B-240908, Sep 11, 1990, Office of General Counsel

Number: B-240908

Date: 1990-09-11

B-240908, Sep 11, 1990, Office of General Counsel

CIVILIAN PERSONNEL - Compensation - Additional compensation - Eligibility - Weekends/holidays - Sick leave CIVILIAN PERSONNEL - Compensation - Additional compensation - Eligibility - Weekends/holidays - Annual leave APPROPRIATIONS/FINANCIAL MANAGEMENT - Claims Against Government - Claim settlement - Pending litigation - GAO review DIGEST: In response to a request from Senator Adams, on behalf of several of his constituents, we advise that a similar issue raised by the employees concerning receipt of Sunday premium pay while on authorized annual and sick leave is currently before the Claims Court in Armitage v. United States, and it is a long-standing policy of this Office not to act on matters which are in the courts pending litigation.

Honorable Brock Adams

United States Senator:

This is in response to your letter of August 1, 1990, in which you request that we review correspondence from your constituent, Milton L. Maas, Jr., and his fellow workers, concerning their claim for Sunday premium pay while on annual and sick leave.

The employees, who are meteorological technicians employed at the National Weather Service (NWS) office in Spokane, have requested reimbursement for Sunday premium pay under the provisions of 5 U.S.C. Sec. 5546(a) (1988), for those Sundays they would normally have worked were it not for approved annual or sick leave. The NWS has denied them reimbursement and the employees claim they are entitled to such reimbursement on the basis of the holdings in two court cases, Gahagan v. United States, 19 Cl.Ct. 168 (1989), and Lanehart v. Horner, 818 F.2d 1574 (Fed. Cir. 1987).

In Gahagan the Claims Court held that the NWS may not reduce an employee's regularly scheduled pay solely due to leave for jury and military duty. In Lanehart the Circuit Court held that the leave with pay statutes prevent any reduction in overtime under the FLSA when eligible employees are on authorized leave.

The NWS employees wish to extend the principles in the two-cited cases in order to receive premium pay for Sundays when they are on scheduled annual or sick leave. A similar issue is now before the United States Claims Court in Armitage, et al. v. United States, 139 89C. It is a long- standing policy of this Office not to act on matters which are in the courts during the pendency of litigation because the eventual outcome of the litigation may resolve the matter. William

C. Ragland, 62 Comp.Gen. 399 (1983); 58 Comp.Gen. 282 (1979). Therefore, we decline to comment on the employees' claims at this time.

If the Claims Court renders a final decision in this case favorable to the plaintiffs, then the employees may reopen their claims with the NWS.