

Date: January 31, 2006

Claimant: [name]

File Number: 04-0031

OPM Contact: Robert D. Hendler

The claimant was employed in a [position] in [agency component], at the U.S. Naval Station (NAVSTA) in Rota, Spain. She requests that the U.S. Office of Personnel Management (OPM) direct her agency to correct her payroll account and be paid accrued sick leave for a total of 51 hours for February 25-26, 2004, and March 1-5, 2004; remove the March 16, 2004, Letter of Reprimand from her official personnel folder; receive “equal and impartial treatment in line with other civilian employees of this command, and commensurate with my military/civilian rank; and that “the escalating harassment that I continue to be a victim of cease immediately (including requirements, policies and procedures specific only to me).” For the reasons discussed herein, the claim is approved in part and denied in part.

The claimant provided a description of the events leading to her claim, including how she left work early on February 25, 2004, informing her supervisor by e-mail that she intended to take four hours of sick leave. She left a message the next day for her supervisor indicating that she would not be reporting for work. Upon returning to work on March 1, 2004, the claimant submitted a sick leave request to her supervisor who refused to authorize sick leave because the claimant had not informed him or spoken to him in person. The claimant stated that she placed a medical excuse on the supervisor’s desk the same day and placed a copy of medical excuse under his door and made additional efforts to speak with him about the sick leave requests.

In her claim letter, the claimant said that “Throughout this period, I received medical attention and medical certification at the Navy Hospital by two separate Naval Medical Officers, but that upon returning to work her supervisor told her that “medical certifications were simply ‘recommendations’ and that only he had the authority to make the final determination regarding the validity of my illness for leave purposes.” She stated that “Over the course of one week, I produced three separate medical certifications from Naval Medical Officers regarding my illness and still was denied legitimate sick leave. It has also been commented that sick leave days need to be requested in advance. My scenario would have been that in mid February 2004, I would have submitted a sick leave request due to unplanned bronchitis/bronchial pneumonia for the

period 25 February through 05 March 2004. Any reasonable person would judge this request ludicrous.”

The record shows that the agency denied the claimant’s grievances with regard to her request to be paid for four hours of sick leave on February 25 and eight hours on February 26, 2005. The agency’s response to the claim states, in part, that: “On 2 and 4 March she left a message on his [her supervisor’s] answering machine. [Claimant] simply fails to understand that leave needs to be requested and then granted before it can be taken, and the supervisor has the authority to approve or deny leave. On March 5 her leave was approved when she provided her supervisor with a doctor’s note before leaving work.” The agency response does not address the references on the use of sick leave cited by the claimant in her March 30, 2004, grievance in response to the Letter of Reprimand regarding her “failure to follow instructions” in notifying her supervisor of her absence.

The record contains copies of documents showing the actions taken by the claimant to request sick leave and the agency’s response. The March 1, 2004, medical slip states: “Please allow rest today due to illness. (Mon & Tues if needed).” The March 3, 2004, medical slip states: “Please excuse from work today and tomorrow if needed for recovery.” The March 5 medical slip, written on a prescription form, states: “Please excuse the patient from work today.” OPM Standard Form (SF) 71, Request for Leave or Approved Absence, for sick leave on March 1-2, 2004, shows that the supervisor disapproved the request because the claimant “failed to get authorization from the supervisor.” The SF 71 requesting sick leave for March 3-4, 2004, was disapproved because the claimant “failed to contact the supervisor prior to leaving. Leave of absence was not authorized.” The SF 71 requesting sick leave for March 5, 2004, was approved.

The record shows that the claimant filed a grievance on March 30, 2004, regarding the March 16, 2004, Letter of Reprimand that she received for failing to follow instructions for requesting leave. In her grievance, the claimant pointed to sections 630.402, 630.403(a) and 630.403(b) of title 5, Code of Federal Regulations (CFR) in support of her contention that the agency’s actions with regard to granting her sick leave were not appropriate. She also cites *Wade v. Department of the Navy*, 829 F.2d 1106, 1109 (Fed. Cir. 1987), *Miller v. Bond*, 641 F.2d 997, 1003 (D.C. Cir 1981), and *Shultz v. United States Navy*, 810 F.2d 1133, 1136 (Fed. Cir.1987) but does not discuss how they apply to her situation. The agency administrative report cites 5 CFR 630.402 and 630.403, but does not address their applicability to the claim and does not address the court cases cited by the claimant. The agency did not take issue with or comment on whether the claimant was ill during the hours for which she requested sick leave.

The agency’s reliance on its authority to administer the sick leave approval process under 5 CFR 630.403 is misplaced. 5 CFR 630.401, entitled "Grant of sick leave," provides, as follows:

An agency shall grant sick leave to an employee when the employee:

- (a) Receives medical, dental, or optical examination or treatment;
- (b) Is incapacitated for the performance of duties by sickness, injury, or pregnancy and confinement;
- (c) Is required to give care and attendance to a member of his immediate family who is afflicted with a contagious disease; or

(d) Would jeopardize the health of others by his presence at his post of duty because of exposure to a contagious disease.

Under 5 CFR 630.401, an agency is required to grant sick leave to an employee when any of the events listed in (a)-(d) occur. *Wade v. Department of the Navy*, 829 F.2d at 1109; *Miller v. Bond*, 641 F.2d 997, 1003 (D.C. Cir. 1981). As the court in *Miller* explained, the use of the phrase "shall grant" emphasizes the fact that an agency must grant sick leave when requested to do so by an employee in the instances set forth by section 630.401(a)-(d). Accordingly, the court ruled that "[n]o agency has the discretion to refuse to grant sick leave to a qualified applicant."

Generally, where a physician's statement opines that an employee is unable to work, an agency's failure to approve the employee's leave request is not justified. *Schultz v. United States Navy*, 810 F.2d 1133, 1136 (Fed. Cir. 1987). In the instant case, the medical documentation was supplied by the agency's own medical staff. The agency has not contested or contradicted the claimant's assertion that she was ill on any of the days for which she obtained a medical excuse or for February 25-26, 2004, for which there is no record of a medical excuse. Given the continuing nature of the illness (see medical slip for March 3, 2004) and the proximity of the earliest dates of the claimed illness, it is reasonable to conclude that the claimant was a qualified applicant for February 25-26, 2004, as well as March 1-5, 2004. Therefore, the agency improperly denied the claimant's request for sick leave for the claimed work hours on February 25-26, and March 1-4, 2004, and that portion of her claim is granted. Since the claimant was granted sick leave for March 5, 2004, that portion of her claim must be denied.

OPM's authority to adjudicate compensation and leave claims flows from section 3702 of title 31, United States Code. The authority in section 3702 is narrow and limited to adjudication of compensation and leave claims. Section 3702 does not include any authority to intervene in disciplinary actions or the other employee relations issues raised by the claimant. Therefore, those aspects of the claim denied must be denied for lack of jurisdiction.

This settlement is final. No further administrative review is available within OPM. Nothing in this settlement limits the claimant's right to bring an action in an appropriate United States Court.