

Opinion No. 60-73

April 14, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Col L. W. Varner Superintendent Fort Stanton Tuberculosis Hospital Fort Stanton, New Mexico

QUESTION

QUESTIONS

1. Is an employee of the Fort Stanton Tuberculosis Hospital entitled to pay for his sick leave in addition to hospital and medical care?
2. Is this employee entitled to pay for his accumulated annual leave in addition to hospital and medical care?

CONCLUSIONS

1. See analysis.
2. See analysis.

OPINION

{*432} ANALYSIS

On March 11, 1959, this office rendered its Opinion No. 59-27 to your institution in answer to questions involving somewhat similar but not the identical questions involved in the instant situation.

Some of the research made in connection with said Opinion 59-27 is susceptible of use herein.

Our answer to your first question is that the status of this employee is no different as regards hospital and medical care than if he were hospitalized in his own home or in some other hospital than the institution headed by yourself.

As regards that portion of your first question having to do with the entitlement of the employee {*433} to sick leave, no specific statute has been found authorizing payment to an employee for such reason. In this connection, the booklet entitled "Personnel Policy and Pay Plan for Classified Employees of the State of New Mexico" issued October 21, 1959, under the title, "Sick Leave," paragraph 6, unnumbered subparagraphs 1 and 2, reads as follows:

"Sick leave with pay shall be accumulated by each salaried employee at the rate of one day for each calendar month of service. Sick leave may be approved to cover absences necessitated by personal sickness, or injury, by required eye and dental care, by serious illness or death in the immediate family not to exceed three days, but not for slight illness or indisposition not incapacitating the employee for the performance of his regular duties. Notification of absence on account of sickness shall be given as soon as possible on the first day of absence. If such notification is not made in accordance with this policy such absence may be charged to annual leave or leave without pay. An employee shall be required to furnish a certificate from an attending doctor of medicine for all consecutive days of sick leave beyond three days. When circumstances seem to warrant such action, the appointing authority may cause to be made an investigation of any case of absence on account of sickness or for any other reason.

Sick leave will not be permitted to accumulate beyond 60 working days."

In a telephone conversation between yourself and this office, you advise that the employee is still on the payroll, in other words, his services have not been terminated. You also advise that it is impossible to say how long the employee will be indisposed, maybe a week, perhaps a much longer period of time. It is our belief that if it is in conformance with the established administrative policy of your institution you can pay the employee his sick leave not in excess of 60 working days in the event, of course, that he retains his present status as an employee.

In answer to your second question, no statute has been found which specifically authorizes payment of accumulated annual leave.

We are again relegated to the provisions of "Personnel Policy and Pay Plan for Classified Employees of the State of New Mexico", unnumbered subparagraph 1 of paragraph 5, entitled "Annual Leave or Vacations" reads as follows:

"Each permanent or probationary employee shall be entitled to annual leave with full pay computed on the basis of one and one-fourth days for each complete calendar month of service, except that annual leave shall not accrue to any employee while on a leave-without-pay status. Such annual leave will be granted upon written application of the employee, except in the case of an emergency, at such time or times as will least interfere with the efficient operation and shall be approved by the appointing authority or an authorized person prior to the date the leave begins. Employees absent without official leave may be subject to deductions from annual leave or salary, suspension without pay, or dismissal. Saturdays, Sundays and holidays occurring within a period of annual leave shall not be charged as annual leave. The minimum charge for annual leave shall be one-half day."

It is our belief that the employee will be entitled to be paid his accumulated annual leave by virtue of said paragraph 5 of the Personnel Regulations for a period of not in excess of 24 working days.

{*434} We repeat what we said in answer to your first question. The status of the employee in this instance is the same as if he were at home or in some other hospital receiving medical care.

By: Carl P. Dunifon

Assistant Attorney General