

# Executive Order

## Special Leaves of Absence to be Given Disabled Veterans in Need of Medical Treatment

With respect to medical treatment of disabled veterans who are employed in the executive civil service of the United States, it is hereby ordered that, upon the presentation of an official statement from duly constituted medical authority that medical treatment is required, such annual or sick leave as may be permitted by law and such leave without pay as may be necessary shall be granted by the proper supervisory officer to a disabled veteran in order that the veteran may receive such treatment, all without penalty in his efficiency rating.

The granting of such leave is contingent upon the veteran's giving prior notice of definite days and hours of absence required for medical treatment in order that arrangements may be made for carrying on the work during his absence.

HERBERT HOOVER

THE WHITE HOUSE,  
July 17, 1930.

[No. 5396]

ELM 514.22

50 A  
RECEIVED By  
MEMPHIS FIELD OFFICE, USPS  
JUN 21 1979  
LABOR LAW DIVISION  
DATE Feb 1979  
LAW DEPT.

UNITED STATES POSTAL SERVICE

Washington, DC 20260

REF: AG:mlg

SUBJECT: Executive Order 5396

TO: Ed Horgan  
Assistant Postmaster General  
Government Relations

This responds to the November 17, 1978, request from your office that we determine the applicability to postal employees of Executive Order 5396, which provides that special leaves of absence shall be granted to disabled veterans in need of medical treatment.

Whether the Postal Service is legally bound by an executive order is largely a function of the authority under which the order is issued. In short, if an executive order is issued pursuant to a statute which is not applicable to the Postal Service, it appears that the order is also not applicable. In this regard, we note that although E.O. 5396 does not cite the authority under which it issued, it seems probable that the Order was issued pursuant to the general authority granted the President in personnel matters under title 5, United States Code. As the Postal Service is generally exempt from the provisions of title 5, pursuant to 39 U.S.C. §410(a), it appears, therefore, that E.O. 5396 is not applicable to the Postal Service.

However, determination of the application of E.O. 5396 also requires consideration of 39 C.F.R. §211.4(c), which provides in pertinent part:

Except as they may be inconsistent with the provisions of the Postal Reorganization Act, with other regulations adopted by the Postal Service, or with a collective bargaining agreement under the Postal Reorganization Act, all regulations of Federal agencies other than the Postal Service or Post Office Department and all laws other than provisions of revised Title 39, United States Code, or provisions of other laws made applicable to the Postal Service by revised Title 39, United States Code, dealing with officers.

Page 2.

and employees applicable to postal officers and employees immediately prior to the commencement of operations of the Postal Service, continue in effect as regulations of the Postal Service. [Emphasis supplied.]<sup>1/</sup>

As subchapter 1-4 of Chapter 630 of the Federal Personnel Manual incorporates E.O. 5396, it could be argued that the Postal Service must comply with that order, as set forth in subchapter 1-4, by virtue of the carryover effect of 39 C.F.R. §211.4(c).

In our view, however, the regulations contained in subchapter 1-4 of Chapter 630 of the Federal Personnel Manual appear to be inconsistent with the leave regulations recently adopted by the Postal Service and incorporated in collective bargaining agreements and, therefore, are no longer applicable to postal employees. In this regard, it is our understanding that Chapter 510, Leave, of the Employee and Labor Relations Manual was intended to supersede all leave regulations formerly applicable to postal employees and, in essence, to "preempt the field" in the area of leave regulations. Accordingly, in our judgment, E.O. 5396 is no longer applicable to the Postal Service by virtue of 39 C.F.R. §211.4(c).

It should be noted, however, that the fact that E.O. 5396 is not applicable to the Postal Service is of little practical consequence. Section 513.32e. of the Postal Service's Employee & Labor Relations Manual provides that a disabled veteran is granted leave - sick leave, annual leave or, if necessary, leave without pay - for medical treatment if the employee submits a statement from medical authority that treatment is required and, when possible, gives prior notice of the definite number of days and hours of absence.

*Sherry Cagnoli*  
Sherry Cagnoli  
Supervisory Attorney  
Office of Labor Law

<sup>1/</sup> See also 39 U.S.C. §1005(f).



441050 B

SENIOR ASSISTANT POSTMASTER GENERAL  
EMPLOYEE AND LABOR RELATIONS GROUP  
Washington, DC 20260

December 6, 1977

Mr. Rickie L. Garmon  
Administrative Assistant  
Disabled American Veterans  
807 Maine Avenue, SW  
Washington, DC 20024

Dear Mr. Garmon:

This is in response to your letter of October 18th;  
we regret the delay, which was unavoidable.

The Postal Service firmly supports Executive Order 5396,  
and we will carefully investigate and rectify any failure  
of Postal management to adhere to the Executive Order.

We have investigated the complaint submitted by Mr.  
Longstreeth, President of the American Postal Workers  
Union in Pittsfield, MA.

As you know, Section 721.431(d) of the Postal Manual  
states that leave "...shall be granted to disabled  
veteran employees so that they may receive treatment."  
The employee's obligation is to give "...prior notice of  
definite days and hours of absence required so that  
arrangements may be made for carrying on the work during  
his absence." The employee must also present "...an  
official statement from duly constituted medical author-  
ity that medical treatment is required...."

The key issue in this case, as we see it, is that leave  
is to be granted so as to permit the disabled veteran  
employee to receive treatment. In the case at hand, the  
employee wanted sick leave so that he could go home and  
get some rest prior to his scheduled medical treatment.  
The Sectional Center Manager/Postmaster of Pittsfield  
has assured me that if the employee's V.A. appointment  
had been scheduled during his work tour, then sick leave  
would have been granted, as is the case with other dis-  
abled veterans. Also, if annual leave or leave without pay

Mr. Garmon, page 2

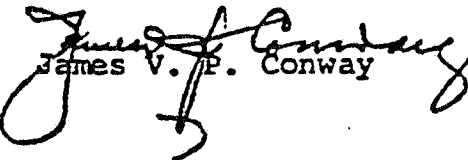
had been requested for the rest period, every effort would have been made to comply.

We regret that a more favorable decision cannot be rendered in this case, but the Postal Service has an obligation to deliver the mail with dispatch and at the lowest possible cost to the American public. Many of the employees granted sick leave must be replaced by employees working overtime and by Flexible Schedule employees called in to cover absences. Thus, sick leave cannot be granted lightly and without full justification.

To reiterate, the employee's request for sick leave would have been approved had his V.A. appointment fallen within his scheduled work tour.

Thank you for bringing this complaint to my attention.

Sincerely,

  
James V. P. Conway

bcc: Mr. Masters  
Mr. C. Scialla, Northeast Region  
J. C. Gildea, Labor Relations  
Regional Directors, E&LR, All Regions

---