

Reference No: E104/1/77; **Date:** 02/12/92

02/12/1992 LP:- Sick Leave - Medical Certificate

Dear Personnel Officer

Discussions have taken place with the Staff Side concerning the procedures to be followed when a Head of Department is not satisfied with the medical evidence produced by an officer in support of an application for sick leave with pay. The Staff Side expressed concern about certain cases where they maintain that pay was stopped without any warning to the officer concerned. Following those discussions, it would appear that some clarification of the procedure to be followed in such cases is required.

It is clear from Circular 25/78 that the production of a medical certificate does not of itself entitle an officer to sick leave, the grant of which is a matter for the Head of the Department. Where a medical certificate is referred to the Chief Medical Officer and he decides that it does not adequately establish that the officer concerned is unfit for work, it is normal for the CMO to seek further medical evidence, usually by way of a doctor-to-doctor report. Where, having considered the medical evidence, the CMO has formed an opinion and the Head of the Department, acting on that opinion, decides that the officer concerned has not discharged the onus of establishing that s/he is unfit for duty for the period for which sick leave has been sought, the following procedure should be followed:

(a) Where the officer concerned is still absent from work when the decision is made, s/he should be informed of the decision and told that pay will be stopped from a specified date should the absence continue beyond that date. The officer should be afforded an opportunity, should s/he disagree with the decision made by the Head of the Department, to submit to examination by the CMO or a doctor nominated by the CMO, the fee for such examination to be paid by the officer concerned, but refunded by the Department should the examining doctor conclude that the officer concerned is not fit for duty. (This procedure should also be employed when an officer on sick leave fails, without reasonable cause, to furnish any further medical evidence which may be required within the time limit specified by the Department requiring it.)

(b) Where the officer concerned has resumed duty before the decision is made, pay should not be withheld in respect of that absence but the officer should be informed of the decision and told that sick leave with pay is unlikely to be approved in the event that a similar decision is made in regard to a future absence.

Of course, no such warning is required where a Department is satisfied, on the basis of evidence at its disposal, that an officer has been malingering or where an officer fails to comply with the sick leave regulations in regard to the submission of medical certificates or otherwise.

The Staff Side also raised the question of the inclusion of details concerning maternity leave in sick leave records. They have pointed out, and this Department agrees, that, under the terms of Circular 27/81, maternity leave should not reckon as sick leave and it is inappropriate that it should be recorded on an officer's sick leave record.

Yours sincerely

Brian Whitney
Principal