

MEMORANDUM FOR DIRECTOR SRS

SUBJECT: Use of 59 Minutes Administrative Leave as a Non-Monetary Incentive Award

1. AGPR 690-9 Civilian Personal Leave Administration, par. 9-3, provides for a Commander or delegatee to authorize an employee's absence from her or his normal duty assignments without charge to personal leave in a broad range of circumstances. The language can be reasonably interpreted to include subject purposes. In particular the regulation states in the cited paragraph:

...In other situations where the activity commander [or designee] makes a determination that the absence would further an agency function, brief periods may be excused.

2. In view of the fact that the leave will be specifically granted as an honorary incentive award, it is my opinion that the statutory and regulatory requirements for incentive awards must also be met. The 59 minutes of administrative leave award is not significantly different from use of Commander's coins or other non-monetary awards in that such awards must be documented so as to comply with the OPM regulation and to avoid the perception that gifts [there is no circumstance in which we can give gifts to employees using appropriated funds] are being given to employees. The documentation need not be extensive. I see no reason for it to be processed through CPAC or DFAS since there is no taxable event, it is intended to be a minor award not to be entered into an individual's personnel folder, and there is no requirement to post the leave to the time keeping system.

3. You should insure that this new award is not inconsistent with any existing labor agreements. It is also advisable to clarify existing local incentive award regulations and SOPS respecting processing of awards and change existing provisions which may technically provide for a review of all awards by an incentive awards committee. This award can be made administratively simple and of instantaneous benefit. It is my understanding that a certificate will be presented to the individuals receiving the 59 minute administrative leave award and that guidance standards will be issued in an incentive awards policy statement or through changes to local regulations.

4. There follows a more detailed legal analysis of the incentive awards authority and the use of non-monetary awards:

a. The relevant incentive awards program is based on general statutory authority in 5 USC 4502, 4503, and 4506. Awards are limited to cash awards, time off awards, and honorary awards (the statute authorizes incurring expense for honorary awards). OPM is charged by the statute to promulgate regulations; said regulations are in 5 CFR Part 451.

b. 5 CFR Part 451.104(a) permits three types of awards: (a) cash, (b) honorary, or informal recognition award, or (c) time-off awards. This language thus equates honorary with informal recognition awards but does not define the terms honorary or informal recognition. 5 CFR 451.103(c)(2) requires the Agency program to provide for documenting justification for awards that are not based on a rating of record.

c. DOD 1400.25-M subchapter 451, Awards, Dec 96, implements DOD policies and requirements for awards and award programs for civilian employees within the DOD. This manual is based on the OPM regulations before they were revised in Aug 95, as it has no references to 5 CFR Part 451. The manual is more restrictive than the OPM guidance in

effect at the time (see GAO case discussion below). In C.4 non-monetary award is defined as:

An award in which the recognition device is not a cash payment or time-off as an award but rather an award of a honorific value, e.g. a letter, certificate, medal, plaque or item of nominal value. [emphasis added]

The key in this definition is the word honorific. To comply with the DOD policy the non-monetary award must be honorific in nature. This definition does not limit cost or utility of an awarded item provided that it is of honorific value. I view this to mean that the primary value of an item, as seen by some third party, must be honorific; that is, the items honors the individual in some manner for some action.

c. AR 672-20, Incentive Awards, 1 June 1993, Chapter 8 lists specific civilian honorary awards authorized by DA. These honorary awards all consist of a certificate, medal, lapel button, or cash in various combinations. There is no provision for any other type of non-monetary award such as jackets, mugs, or commander's coins; however, the regulation does not explicitly prohibit other forms of honorary award except through a general prohibition on supplementation without approval. Use of items of relatively low intrinsic value or nominal value has apparently evolved across the Army and other agencies under the statutory authority to incur expenses to honor personnel for service performance and the permissiveness of OPM regulations and GAO opinions.

d. The General Accounting Office has recognized the giving of non-monetary awards. The most recent case involving non-monetary awards follows:

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DIGEST

Under the Government Employees Incentive Awards Act, > 5 U.S.C. Sec. 4501-> 4507 (1988), and the implementing regulations in 5 C.F.R. Part 451, our Office advises an agency that we see no legal objection to the use of non-monetary awards, such as tickets to local sporting events or amusement parks, as part of an agency's awards program.

Dear Ms. Bell: [Navy case]

This is in response to your letter to the Comptroller General dated January 31, 1994 (Reference 12451 NADEP-11000).

You indicate that your naval facility will soon be implementing a non-monetary awards program and would like to use, as a form of recognition, items such as tickets to local sporting events or local amusement parks. You ask for guidance on whether such award items are appropriate under the Government Employees Incentive Awards Act, > 5 U.S.C. Sec. Sec. 4501-> 4507 (1988).

The Office of Personnel Management (OPM) has promulgated regulations and policy guidance on incentive awards. The regulations specifically provide for non-monetary awards for superior accomplishment, including a medal, certificate, plaque, citation, badge, or similar item that has an award or honor connotation. See, > 5 C.F.R. Sec. 451.103 (1993). In subchapter 7 of chapter 451, of the Federal Personnel Manual (FPM), (Inst. 265, Aug. 14, 1981) (Non-Monetary Recognition), OPM emphasizes that

the range and variety of non-monetary incentives is almost limitless and that each organization should design incentive programs that will motivate high levels of accomplishment.

Our decisions have also recognized the appropriateness of non-monetary items or merchandise-type items as awards. See e.g., Federal Aviation Administration, B-243025, May 2, 1991 (jackets with FAA insignia); > 67 Comp. Gen. 349 (1988) (coffee mugs, pins, and telephones of nominal value); (copies of decisions cited enclosed). In both cases, we held that the purchase of the items for use as awards to employees is a proper expenditure of appropriated funds. The same funding should be used for the non-monetary awards as is used for cash awards under the Act. See > 5 U.S.C. Sec. 4502(d) (1988).

We have not placed a dollar limit on these awards items, but have limited them to nominal cost. We note that the value of occasional sporting and entertainment tickets would appear to be excludable from an employee's income as de minimis fringe benefits, under > 26 U.S.C. Sec. 132(a)(4) and > 132(e)(1) (1988). See > 26 C.F.R. Sec. 1.132-6(e)(1) and (e)(2) (1993). Since this is an income tax matter, you may wish to consult with the Internal Revenue Service.

Based on the foregoing, we see no legal objection to an award of tickets of nominal value to a sporting or entertainment event as part of a non-monetary awards program within the sound discretion of management.

Sincerely yours,

Seymour Efros for
Robert P. Murphy
Acting General Counsel

e. OPM has changed its regulations and no longer explicitly recognizes non-monetary awards. The 5 C.F.R. Sec. 451.103 (1993) language which the GAO relied on no longer exists. The FPM was abolished and the awards language cited in the GAO case has apparently not been incorporated into any of the current OPM regulations or guides. A review of the Federal Register notices respecting the changes by OPM revealed that the changes were made as part of the National Performance Review with the intent of providing each Department or Agency more flexibility in operating its personnel programs. The DOD manual cited above was issued subsequent to the above CFR changes and the most recent GAO decision on the subject of non-monetary awards.

f. I read the GAO case as saying that an Agency may give non-monetary awards of virtually any type, if its awards program permits, and not be in violation of OPM regulation or the statutory authority for civilian awards provided the awards are of nominal value. It then proceeds to say sporting or entertainment event tickets are of nominal value. This easily places nominal value in the greater than \$20 and perhaps less than \$100 range. This reasoning is not out of line with what the Office of Government Ethics sets at the permissible gift exclusion of \$20 (\$50 cumulative per source) as being de minimus. Since the revised OPM rules are intended to be more flexible, I see no inconsistency with the GAO decisions based on the older presumably less flexible regulations. Therefore, non-monetary awards are governed by DOD and Army policies not with standing a possibly more flexible position being taken by OPM. There is nothing in the OPM regulation prohibiting agencies from taking a more restrictive approach to their awards program (unlike the ethics regulations issued by the Office of Government Ethics).

g. The Army incentive awards regulation permits only a very narrow listing of honorary awards; however, accepted policy appears to be different. For example, the use of Commander's coins is extremely wide spread and appears to have become an accepted deviation to the regulation. I have no doubt that the coins would be perceived as honorific by any outside observer. The question for this opinion thus becomes is whether the 59 minutes administrative leave awards are or will be perceived as honorific in nature. It is my understanding that a certificate will be presented to the individuals receiving the 59 minute administrative leave award and that guidance standards will be issued in an SSBCOM incentive awards policy statement. I believe this will satisfy the honorific requirements of the Army regulation.

h. All non-monetary awards are explicitly required by OPM regulation to be documented. The DOD and Army regulations and policies can not waive this requirement. Therefore, all honorific awards such as Commander's coins, plaques, framed works of art with presentation inscriptions, jackets, 59 minutes administrative leave or what ever else one may select to use for awards must have documentation supporting the award. See 5 CFR 451.103(c)(2). I see no objection to after the fact preparation of such documentation. It is not unexpected that a Commander will present a coin or leave award to an individual or multiple team members on the spot with out advanced planning. However, the Commander should then promptly prepare the documentation presenting the basis for the award after the fact. Government operations are replete with examples of such after the fact documentation or ratification such as that exercised by Contracting Officers respecting informal commitments where not otherwise illegal.

Robert W. Poor
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