

Office of Government Ethics

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Letter to a Federal Employee dated June 2, 1995

This is in reply to your letter of March 22, 1995, concerning the decision of [your agency] to require you to take annual leave or leave without pay during a period of time when you were pursuing private sector employment opportunities. We regret the delay in responding to your inquiry.

You indicate that you notified your supervisor shortly before your retirement that you were disqualifying yourself from your duties as a contracting officer's technical representative (COTR) in relation to a contract for the management of [an office] at [a] Center. Your supervisor responded that you would have to take annual leave or leave without pay since the duties from which you wished to be recused were "central or critical so that disqualification would materially impair your ability to do your job." You had argued that you should not be required to take leave during the time you were performing functions unrelated to your duties as a COTR, including administrative tasks relating to your termination from Government service. Your supervisor granted you eight hours of official time during which you could perform tasks relating to your outprocessing.

In order to avoid violating the regulatory Standards of Ethical Conduct for Employees of the Executive Branch or 18 U.S.C. § 208, an employee must avoid participating in any particular matter that would have a direct and predictable effect on the financial interests of a person or entity with whom he is seeking employment or with whom he has an arrangement concerning prospective employment. While there is no requirement that an employee notify a supervisor or other agency official of the need to be disqualified from assignments affecting a prospective employer, notification permits a supervisor to minimize any disruption of the agency's mission by arranging assignments accordingly. Moreover, an employee may, as a practical matter, have to explain his avoidance of certain duties.

Under 5 C.F.R. § 2635.604(d), an agency "may allow an employee to take annual leave or leave without pay while seeking employment." An agency may choose this course of action where it determines that "the employee's action in seeking employment will require his disqualification from matters so central or critical to the performance of his official duties that the employee's ability to perform the duties of his position would be

materially impaired." The Standards of Ethical Conduct regulation specifically provides that these determinations shall be made by the agency. The regulation recognizes that an agency is in the best position to apply the "central or critical" standard and to determine whether an employee must take leave in order to pursue employment opportunities. Accordingly, it is not appropriate for me to substitute my judgment for that of your supervisor at [the agency]. Similarly, I cannot overrule her determination to allot no more than eight hours of official duty time during which you could perform the administrative tasks necessary to end a 31-year career.

Sincerely,

Stephen D. Potts
Director