

Date: March 24, 2004
Claimant: [name]
File Number: 03-0019*
OPM Contact: Deborah Y. McKissick

[*Issued erroneously as duplicate File Number 03-0020]

The claimant is an employee of the Department of Veterans Affairs (VA). He is requesting a restoration of 153 hours of annual leave. The Office of Personnel Management received the claim on March 12, 2003 and the agency administrative report on October 17, 2003. For the reasons discussed herein, the claim is denied.

The claimant states that he carried 153 hours of restored leave from March 1996 to July 1999, when he was employed with the Department of the Navy (Navy). In July 1999, the claimant began working with VA. The restored leave appeared on his leave and earnings statement in January 2000 and was entered into VA's electronic Enhanced Time and Attendance (ETA) system. The claimant stated that he had not reviewed the ETA on a regular basis or noticed the 2003 forfeiture date. At the end of the 2002 leave year, the claimant had not used the 153 hours of annual leave. Therefore, the claimant forfeited the 153 hours of annual leave.

The agency administrative report states that the agency received the claimant's Summary of Leave Data (the form) from the Navy in October 1999 and the VA's payroll office received the form on November 1, 1999. "The document received from Navy indicated 153 hours of restored leave but did not show when it had been earned. However, the Department of Defense Civilian Leave and Earnings Statement he submitted with his waiver request indicates that he had the leave on his record as early as 1996."

The agency states that there is no indication that VA contacted the Navy to determine the forfeiture date for the restored leave, but established a new two-year termination for the claimant. The 153 hours of restored leave was noted on VA's ETA system. The VA policy prescribes that "employees are responsible for scheduling and, if necessary, rescheduling annual leave to avoid forfeitures." The agency determined that there are no bases within the applicable guidelines to approve the claimant's request since the claimant "had at least six years to use leave that was supposed to be used in two and that he had been informed through the ETA system that is available to all employees."

Section 6304 (d)(2) of title 5, United States Code (U.S.C.) states:

Annual leave restored..., which is in excess of the maximum leave accumulation permitted by law shall be credited to a separate leave account for the employee and shall be available for use by the employee within the time limits prescribed by regulations of the Office of Personnel Management.

Section 630.306(a) of title 5, Code of Federal Regulations (CFR) states:

. . . . annual leave restored under 5 U.S.C. 6304(d) must be scheduled and used not later than the end of the leave year ending 2 years after (1) the date of restoration of the annual leave forfeited

The Civilian Personnel Law Manual states:

. . . . The 2-year requirement, which is contained in a regulation issued by OPM, has the force and effect of law and may not be waived or modified by this Office. *Dr. James A. Majeski*, B-247196, April 13, 1992. *See B-188993*, December 12, 1977.

.... no legal authority exists for further restoration of leave once it is forfeited a second time. *William Corcoran*, B-213380, August 20, 1984.

The Comptroller General has found that:

Considerable weight must be afforded to the Commission's [the Civil Service Commission whose regulatory authority regarding leave is now exercised by OPM] interpretation of its regulation which, having been issued pursuant to a statutory mandate, has the force and effect of law. In the absence of some inconsistency with the parent statute, this Office has no authority to waive or modify the application of such a regulation even where they may be some indication of extenuating circumstances. Therefore, while it is a question of fact to be determined by the employing agency as to whether restored leave has or has not been used within the prescribed time limit, as a matter of law any restored leave unused at the expiration of the prescribed time limit is again forfeited with no further right to restoration or to be paid for it. *Matter of Patrick J. Quinlan*, B-188993, December 12, 1977.

OPM does not conduct adversary hearings, but settles claims on the basis of the evidence submitted by the claimant and the written record submitted by the government agency involved in the claim. 5 CFR 178.105; *Matter of John B. Tucker*, B-215346, March 29, 1985. Moreover, the burden of proof is on the claimant to prove the liability of the government and his or her right to payment. 5 CFR 178.105; *Matter of Jones and Short*, B-205282, June 15, 1982. Thus, where the written record presents an irreconcilable dispute of fact between a government agency and an individual claimant, the factual dispute is settled in favor of the agency, absent clear and convincing evidence to the contrary. 5 CFR

178.105; *Matter of Staff Sergeant Eugene K. Krampotich*, B-249027, November 5, 1992; *Matter of Elias S. Frey*, B-208911, March 6, 1984; *Matter of Charles F. Callis*, B-205118, March 8, 1982. The claimant's annual leave was restored in January 2000. The restored annual leave should have been used by the end of the 2002 leave year, but was not. Therefore, the claim is denied.

This settlement is final. No further administrative review is available within the Office of Personnel. Nothing in this settlement limits the claimant's right to bring an action in an appropriate United States Court.