

Compensation Claim Decision
Under section 3102 of title 31, United States Code

Claimant: [name]

Organization: Naval Undersea Warfare Center Newport
Division (NUWCDIVNPT)
Naval Sea Systems Command
Department of the Navy

Claim: Request for Annual Leave Restoration

Agency decision: Denied

OPM decision: Denied

OPM contact: Robert D. Hendler

OPM file number: 05-0032

/s/ Judith A. Davis for

Robert D. Hendler
Classification and Pay Claims
Program Manager
Center for Merit System Accountability
Human Capital Leadership
and Merit System Accountability

4/14/2006

Date

The claimant, who retired from the Naval Undersea Warfare Center Newport Division (NUWCDIVNPT) on December 31, 2004, requests the Office of Personnel Management direct his former agency to restore 218 hours of annual leave. OPM received a claim on January 4, 2005, and the agency's administrative report on January 30, 2006. For the reasons discussed herein, the claim is denied.

The claimant forfeited 63 hours of annual leave in 1994, six hours in 1995, and 53 hours in 1996. NUWCDIVNPT officials determined NUWCDIVNPT was a realigning activity under the Defense Base Closure and Realignment Act of 1990 (BRAC), Public Law Number 101-510. In accordance with § 6304(d)(3)(A) of title 5, United States Code (U.S.C.), a closure or realignment creates an exigency of the public business, and any leave lost by an employee of such an installation will be restored to the individual. Consequently, the activity restored 122 hours of annual leave the claimant forfeited from 1994 to 1996.

The claimant continued to forfeit annual leave from 1997 to 1999, which was again restored to him by the activity based on 5 U.S.C. § 6304(d)(3)(A). Specifically, 96 hours were accrued, forfeited, and restored to the claimant in 1997; 90.5 hours in 1998; and 48 hours in 1999. In 1999, NUWCDIVNPT officials determined the activity was no longer affected by the BRAC and ceased the practice of automatically restoring the annual leave forfeited by the installation's employees. Moreover, the findings from a review conducted by the Navy's Inspector General and subsequent leave audits by the Naval Sea Systems Command (NAVSEA) in 2002 revealed that, even prior to 1999, NUWCDIVNPT did not meet the definition of a closing or realigning activity which entitles employees to the automatic restoration of leave provided by 5 U.S.C. § 6304(d)(3)(A).

In a letter, dated July 3, 2002, NAVSEA notified the claimant of their intention to deduct 218 hours from his restored leave balance. In reconstructing his appropriate leave balance, NAVSEA determined the claimant was never entitled to restoration of forfeited annual leave from 1994 to 1996, but they claimed appropriate documentation existed to allow the restoration of the claimant's annual leave from 1997 to 1999 based on 5 U.S.C. § 6304(d)(1)(B), which allows the restoration of annual leave to an employee if there is an exigency of the public business when the annual leave was scheduled in advance.

NAVSEA deducted the 122 hours erroneously restored leave from 1994 to 1996. In addition, since restored annual leave expires two years after the year in which the leave was forfeited as required by section 630.306 of title 5, Code of Federal Regulations, the 96 hours restored to the claimant in 1997 expired two years from the end of the leave year in which it was forfeited. The claimant failed to use the leave before this expiration date, so the 96 hours earned in 1997 were also deducted from his leave balance. Deducting 122 hours of improperly restored from 1994 to 1996, plus the 96 hours properly restored in 1997 but subsequently forfeited because it was not used within the two-year deadline, the claimant lost a total of 218 hours of restored annual leave.

The claimant disputed the decision to deduct his leave account balance by submitting a claim to NAVSEA's Commander for Corporate Operations. In their September 30, 2002, response, NAVSEA denied the claimant's request but further explained the claimant's current leave account by factoring in the leave properly restored and the leave used during the period in

question. Their response indicated the claimant used 270.5 hours of restored annual leave in 2000. Of the 270.5 hours used, 138.5 hours were charged to the total annual leave restored to the claimant in 1998 and 1999. Having exhausted the restored annual leave balance, the remaining 132 hours were charged to the claimant's regular annual leave account. The agency also noted that even if the 122 hours forfeited and restored to the claimant from leave years 1994 to 1996 were proper, the restored annual leave expired two years after the year in which the leave was forfeited, which, in the claimant's situation, was the end of the 1998 leave year at the latest. The record indicates the claimant first used annual leave during this period in 2000, so the annual leave accrued, forfeited, and restored from 1994 to 1996 to the claimant remained unused and the total balance expired in the 1998 leave year.

Federal employees may accrue and carry over a maximum of 30 days annual leave into the next leave year, but accumulated annual leave is forfeited when it exceeds the maximum amount and is not used before the end of a leave year. As discussed in Title II of the Civilian Personnel Law Manual, Chapter 2, Subpart G:

Leave forfeited by operation of 5 U.S.C. § 6304(a) or (b) (30-day or 45-day or personal ceiling limitation on accumulated leave) may be restored under 5 U.S.C. § 6304(d), if the forfeited leave resulted from (1) an administrative error, (2) the exigencies of public business when the annual leave was scheduled in advance, or (3) sickness of the employee when the annual leave was scheduled in advance.

We agree with the claimant that NUWCDIVNPT officials erred in believing their activity was subject to a BRAC realignment or closure, but the determination as to what constitutes an administrative error lies primarily with the employing agency. As a result, NAVSEA considered the possibility an administrative error occurred in the restoration of the claimant's forfeited annual leave, which allows for restoration of leave under 5 U.S.C. § 6304(d)(1)(A). However, even if the agency restored the annual leave forfeited from the 1994 to 1996 leave years, the issue is immaterial as the claimant, having failed to use the restored annual leave within the required two-year period, forfeited the leave again. No legal authority exists for further restoration of leave once it is forfeited a second time. See *William Corcoran*, B-213380, August 20, 1984; OPM File Number S9701310, January 14, 1998; OPM File Number 02-022, June 19, 2002; OPM File Number 02-0028, December 10, 2002.

The two-year requirement is contained in OPM regulations, and it has the force and effect of law and cannot be waived or modified. See *Dr. James A. Majeski*, B-247196, April 13, 1992. The claimant said the leave balances and expiration dates reported on his leave and earning statements support his claim. However, erroneous advice or information provided by a Government employee cannot bar the Government from denying benefits not otherwise permitted by law. *Office of Personnel Management v. Richmond*, 496 U.S. 414, 110 S. Ct. 2465, *rehearing denied*, 497 U.S. 1046, 111 S. Ct. 5 (1990).

Therefore, the claimant's request for restoration of 218 hours of forfeited annual leave is denied. OPM does not conduct investigations or adversary hearings in adjudicating claims but relies solely on the written record presented by the parties. See *Frank A. Barone*, B-229439, May 25,

1988. When the agency's factual determination is reasonable, we will not substitute our judgment for that of the agency. See, e.g., *Jimmie D. Brewer*, B-205452, March 15, 1982.

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