

Date: March 31, 2003  
Claimant: [name]  
File Number: 02-0036  
OPM Contact: Deborah Y. McKissick

The claimant was employed in a civil service position with the Department of the Interior, Bureau of Reclamation, Centennial Job Corps, from 1994 until she transferred to a nonappropriated fund (NAF) position with the Department of the Army at the Fort Meade Teen Center in November 2001. The claimant is requesting reinstatement of her service computation date, annual and sick leave hours. The Office of Personnel Management (OPM) received the compensation claim on July 15, 2002, and the agency administrative report on December 11, 2002. For the reasons discussed herein, the claim is denied.

The claimant states that, when she transferred from a GS-7 position with the Department of the Army, to a GS-9 position with the Department of the Interior in 1994, her service computation date of March 28, 1985, Federal Employee Retirement System (FERS) retirement, and leave hours were transferred. The claimant decided to remain with FERS retirement and not transfer into NAF retirement due to her years of service.

In November 2001, the claimant's annual and sick leave hours were not transferred after she transferred from a civil service position with the Department of the Interior to a NAF position with the Department of the Army. In February 2002, the Department of the Interior issued a check for the claimant's annual leave balance of 87.3 annual leave hours. The claimant expressed her concern regarding her leave hours to the Fort Meade NAF Personnel Office. A representative of the Fort Meade NAF Personnel Office initially informed the claimant that her benefits were "portable" when she transferred from the Department of the Interior to the Department of the Army. However, according to a document submitted by the claimant, no valid interchange agreement exists between NAF and the Department of the Interior.

In April 2002, the claimant accepted a position at [different installation]. On April 16, 2002, the claimant was informed that the Fort Meade NAF Personnel Office was still working to correct her leave problem. On April 24, 2002, the claimant received a copy of her personnel action form requesting transfer of her leave. However, on April 25, 2002, the claimant was informed that her leave would not transfer. On April 30, 2002, the claimant was informed that her leave was not portable from the Department of the

Interior to Fort Meade. Therefore, the claimant lost 479 hours of sick leave and seven years of credit for her FERS retirement.

In the agency administrative report, the agency explained that, prior to the claimant's appointment with Fort Meade, the claimant was erroneously informed that her appropriated fund civil service benefits, including annual and sick leave, were portable.

In the agency administrative report, the agency referenced several public laws to support its decision that the claimant's appropriated fund service, which included annual and sick leave, was not portable.

Under 5 U.S.C. 2105(c), with certain exceptions, NAF employment is not considered to be Federal service for purposes of laws administered by OPM. NAF employee benefits, including retirement and health and life insurance coverage are not subject to requirements applicable to civil service positions. Therefore, unless specifically provided by law, NAF service is not creditable for purposes of civil service benefits, nor is service in an appropriated fund position creditable for purposes of Department of Defense (DOD) NAF benefits. The Nonappropriated Fund Instrumentality (NAFI) Employees' Retirement Credit Act of 1986, P.L. 99-638, was the initial law to permit civil service retirement system credit for former NAF service. The Portability of Benefits for NAF Employees Act, P.L.101-508, was enacted in 1990. Section 1043 of P.L.104-106 expanded the authorities provided by the Portability Act, primarily in the area of retirement elections. The 1990 and 1996 portability legislation provided a retirement election for eligible employees who move with a break in service of no more than one year between DOD or Coast Guard NAF positions and retirement covered by civil service positions in any agency. Employees who move with a break in service of no more than three days between DOD NAF and DOD APF positions may be eligible for pay, leave, and reduction in force benefit portability.

The Portability of Benefits for NAF Employees Act of 1990, P.L.101-508 permitted employees to remain in their civil service or NAF retirement plan when they move between APF and NAF employment systems. The Act covered moves between DOD NAF and DOD APF positions on or after January 1, 1987, without a break in service of more than 3 days. The Act required employees to be vested (5 years in retirement plan); did not permit Civil Service Retirement System (CSRS) and FERS credit for former NAF service. The Enactment was to primarily assist DOD employees affected by the January 1, 1987, Congressionally directed restructuring of the MWR program.

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. Therefore, we accept the agency's position that the claimant's civil service career tenure and annual and sick leave hours were not portable when she transferred from the Department of the Interior to the Department of the Army. Hence, this claim is denied.

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