

Date: January 11, 2006
Claimant: [name]
File Number: 04-0023
OPM Contact: Robert D. Hendler

The claimant requests credit for his military service in the determination of his leave accrual rate. He is employed as [position] with the Department of the Air Force in Alexandria, Virginia. The Office of Personnel Management (OPM) received the claim on June 16, 2004, and the agency administrative report on January 11, 2005. For the reasons discussed herein, the claim is granted.

The claimant and the agency concur, that the claimant was appointed to a Federal civilian position effective November 18, 2002, while on terminal leave from the military.* He retired from military service on December 31, 2002.

The administrative report cites agency policy issues by the Defense Civilian Personnel Management Service in support of its position that: "retirees hired while in a terminal leave status should be treated like any other retiree. Their service credit [for Service Computation Date-Leave (SCD-Leave) purposes] limited to only that time verified by the appropriate military authority on the SF 813 IAW [in accordance with] 5 USC 6303 and Chapter 6 of the Guide to Processing Personnel Actions."

Congress has limited the circumstances under which military retirees may receive credit for their military service in the computation of their leave accrual rates. However, these limitations do not apply to individuals who have not retired from military service at the time of their appointments to civilian positions. *See* the Dual Compensation Act, Pub. L. No. 88-448, § 203, 5 U.S.C. § 6303(a). It is well established that an individual placed on terminal leave is on active military duty and is not in a retired status. *See Major James D. Dunn*, B-251084, October 12, 1993; 56 Comp. Gen. 855 (1977); and 45 Comp. Gen. 180 (1965)

* As explained by the United States Court of Claims, *terminal leave* is "a leave of absence granted an officer at the end of his period of military services; a permission to be absent from duty." *Terry v. United States*, 120 Ct. Cl. 315 (1951). Prior to 1945, under the leave laws then in effect, leave of up to 60 days without deduction from pay and allowances could be taken by Army officers at the discretion of the Secretary of War. 56 Comp. Gen. 855 (1977).

OPM does not conduct investigations or adversary hearings in adjudicating claims, but relies on the written record presented by the parties. *Frank A. Barone*, B-229439, May 25, 1998. Where the record presents an irreconcilable factual dispute, the burden of proof is on the claimant to establish the liability of the United States. *Jones and Short*, B-205282, June 15, 1982.

Therefore, the claimant is entitled to credit for his entire period of military service in determining his leave accrual rate at the time of his initial civilian appointment on November 18, 2002, because the claimant's appointment to a Federal civilian position was effective before his retirement date from the military. The effective date of his military retirement on December 31, 2002, does not disturb, set aside, or subject his leave accrual rate to recalculation for the period of his current civilian appointment. For purposes of service calculation for SCD-Leave, the claimant's military service is creditable through November 17, 2002, the last day of his active duty prior to civilian employment. Upon appointment to his civilian position, the claimant will begin receiving civilian service credit for leave accrual purposes. The remaining military service, from November 18, 2002, to December 31, 2002, cannot be used to further enhance the employee's leave accrual rate. If the claimant separates and is reemployed later, the restrictions for crediting his military service cited by the agency will apply. Accordingly, the claim is granted

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