

Compensation Claim Decision
Under section 3702 of title 31, United States Code

Claimant: [name]

Organization: Gallaudet University
Washington, DC

Claim: Request for Unpaid Leave

Agency decision: Denied

OPM decision: Denied; Claimant is not a Federal
Employee for Purposes of Lump Sum
Annual Leave

OPM contact: Robert D. Hendler

OPM file number: 05-0030

/s/ for

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

6/19/2006

Date

The claimant retired on July 21, 2001, from her position as a teacher at Gallaudet University in Washington, DC. She believes she was not properly compensated for her unused annual leave upon her retirement in July 2001. The Office of Personnel Management (OPM) received the compensation claim on July 1, 2005, and the agency administrative report (AAR) on August 29, 2005. For the reasons discussed herein, the claim is denied.

The claimant was first employed by the University in an administrative staff position accruing annual leave in accordance with local policy. In 1989, she voluntarily transferred to a teaching position, which did not offer annual leave benefits. At the time of her transfer, the claimant's 240 hours of unused annual leave, the maximum amount eligible to be carried over from one leave year to another, was frozen until such time as she terminated her employment with the university. When the claimant retired in 2001, she received a lump-sum payment for her unused annual leave based on the rate of pay in effect when the leave was earned, which in the appellant's case, was the 1989 rate of pay (\$30.00 per hour) she received before moving to the *non-leave accruing* teaching position.

The claimant asserts that since the annual leave was carried over from year to year until her retirement, the lump-sum payment should be based on her hourly rate at the time of her retirement in 2001, not her 1989 rate of pay. She seeks redress from OPM because she is covered by the Civil Service Retirement System. The claimant appears to assert that her lump sum annual leave payment should be based on OPM rules because Gallaudet University cited OPM in rules in its August 21, 2001, letter to her as it relates to how accumulated sick leave is used to compute CSRS retirement benefits.

OPM's authority to adjudicate compensation claims flows from 31 U.S.C. § 3702, is narrow, and is limited to settling claims involving current and former *Federal* civilian employees who receive or received compensation and leave benefits under various provisions of Federal law. Eligibility for payment for accumulated and lump sum annual leave is limited to Federal employees as defined in 5 U.S.C. § 2105 or as otherwise defined in 5 U.S.C. § 5551. Employees of Gallaudet University are not considered Federal employees as defined in 5 U.S.C. § 2105 or as otherwise defined in 5 U.S.C. § 5551.

The record shows the University is a private institution governed by a board of trustees. Policies and procedures, including compensation and leave, are established by the University. By Act of Congress, Gallaudet University employees participate in the Federal Employees Retirement System as provided for in 5 U.S.C. 8401(11)(a) or, in the case of the claimant, the Civil Service Retirement System as provided for in 5 U.S.C. 8331(1)(H) and, as noted by the university, OPM leave provisions as they pertain to retirement benefits. Consideration of leave is limited, in the claimant's case, to how CSRS treats unused sick leave in the calculation of retirement benefits and does not extend to or affect the claimant's lack of eligibility for lump sum annual leave under 5 U.S.C. § 5551. Because the claimant is not considered a Federal employee for purposes of lump sum annual leave, we must reject her claim for lack of jurisdiction. Any entitlement to lump sum payment is at Gallaudet University's discretion under that university's rules.

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 in an appropriate United States Court.