

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

Claimant: [name]

Organization: U.S. Missile Command
Department of the Army
[installation & State]

Claim: Request to Substitute Sick Leave
For Time Charged as Absent
Without Leave

Agency decision: N/A

OPM decision: Denied; Time Barred

OPM contact: Robert D. Hendler

OPM file number: 07-0001

/s/ for

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

11/1/2006

Date

The claimant, formerly employed in a GS-13 Electronics Engineer position with the U.S. Missile Command (now known as the U.S. Army Aviation and Missile Command), Department of the Army (DA, at [installation & State]), seeks to have sick leave substituted for a period of time the agency had charged as absent without approved leave (AWOL). She asks the Office of Personnel Management (OPM) “reopen my complaint for investigation” on this matter. OPM received the claim request dated September 7, 2006, on October 2, 2006. For the reasons discussed herein, the claim is time barred.

The claimant provided a copy of OPM File Number: S9700858, August, 19, 1997, on this same issue:

A former employee of the Department of the Army claims sick leave for a period of time the agency charged as absent without approved leave (AWOL). The period was one of two periods charged to AWOL that formed the basis of an adverse action to remove the employee. On appeal to the Merit Systems protection Board, the Board sustained one AWOL charge and did not sustain the other. The employee petitioned the administrative judge (AJ) for an enforcement order to direct the agency to substitute sick leave for the period of time covered by the AWOL charge that was not sustained, which the AJ dismissed for lack of jurisdiction. [claimant] v. Department of the Army, AT-0752-96-0169-C-1, July 3, 1997, initial decision.

Although this Office may settle claims involving Federal employees' compensation and leave, we require claimants to first submit their claims to the agencies out of whose activities the claim arose. Simply because a period of time is not AWOL, it does not follow that the time should be charged to sick leave, rather than some other form of paid leave or leave without pay. In this case, the record does not show that the claimant has requested sick leave. Therefore, the claimant should assert her claim to her former agency, and, if she is not satisfied with the agency's decision, she may then submit her claim here.

Accordingly, the claim is dismissed.

In her September 7, 2006, letter the claimant states on October 11, 2005, she wrote to the agency “requesting sick leave pay,” and asserts:

The agency responded by providing me with a copy of the judge's July 3, 1997 ruling and a written statement restating the judge's ruling. The agency continues to deny my request...I understand that there has been an extended lapse of time since my initial request to your agency, however, this has been due to medical reasons. I spoke with a representative from the Department of Workman's Compensation Office, District Office, Jacksonville, FL, and was told that per the Code of Federal Regulations there was not a statute of limitation regarding workman compensation back payment. In addition, I spoke with the officer of the week for the Office of Special Council [sic]; I was also told there were no time limitations regarding pay issues.

Documentation submitted by the claimant confirms she wrote to her former employing DA activity on October 11, requesting that, if DA did not pay her for the period July 5, 1995 to August 31, 1995, the “agency provide full payment from my sick leave bank.”

In accordance with the statute of limitations under the Barring Act, any entitlement to substitute paid sick leave for any time the period starting July 5, 1995, and ending August 31, 1995, expired on August 31, 2001, due to the running of the six-year statute of limitations. The record shows the claimant did not preserve the claim with the agency until on or shortly after October 11, 2006, despite having been instructed by OPM to file a claim with her agency on August 19, 1997. In view of this, the claim is time barred under the Barring Act. The Barring Act does not merely establish administrative guidelines; it specifically prescribes the time within which a claim must be received in order for it to be considered on its merits. *Matter of Nguyen Thi Hao*, B-253096, (August 11, 1995). OPM does not have any authority to disregard the provisions of the Barring Act, make exceptions to its provisions, or waive the time limitation that it imposes. See *Matter of Nguyen Thi Hao, supra*; *Matter of Jackie A. Murphy*, B-251301 (April 23, 1993); *Matter of Alfred L. Lillie*, B 209955, May 31, 1983. Thus, the law precludes us from considering this claim.

Under 5 CFR 178.105, claims are settled on the written record; and the claimant has the burden of proving the liability of the Federal Government and his or her right to payment. OPM does not conduct investigations or adversary hearings in adjudicating claims but relies on the written record presented by the parties. See *Frank A. Barone*, B-229439, May 25, 1988.

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.