

The claimant occupies a Supervisory Acquisition Program Manager, YC-1101-03, position functioning as Director, Installation and Logistics Division (ILD), with [agency component], Department of the Air Force, at [installation & State]. He requests restoration of 80 hours of calendar year 2006 unused annual leave forfeited as a result of standing up the ILD as part of a revised organizational structure. The U.S. Office of Personnel Management (OPM) received the claim request on January 23, 2008, and the agency administrative report (AAR) on April 7, 2008. For the reasons discussed herein, the claim is denied.

In his January 2, 2008, claim request, the claimant states he had 206 hours of use-or-lose leave when he took command of the ILD in early September 2006. He states in his previous assignment he intended to either retire in January 2007 or carry out a planned leave schedule, a copy of which was submitted with his claim request; i.e., "Projected Leave Schedule". Because of the duties involved in standing up the ILD, he states he was required to take six separate trips from September through December 2006 and was "only able to use 126 of the 206 hours-- leaving a balance of 80 hours of use or lose leave...."

The AAR states the claimant failed to provide documentation listed in Air Force Instruction (AFI) 36-815 required for the restoration of forfeited annual leave: (1) the specific beginning and ending dates of the exigency period and approval to cancel the scheduled leave, (2) the date the leave was scheduled and approved, (3) a description of the exigency showing that it was of such importance that he could not be excused from duty, and (4) a statement as to why there was no alternative to cancellation of the scheduled leave and why use of the leave could not be rescheduled during the remainder of the leave year. The AAR also points to certain discrepancies between the claimant's "Projected Leave Schedule" and his January 2, 2008, request to OPM for restoration of leave.

Under 5 U.S.C. 6304, a Federal employee may accrue and carry over a maximum of 30 days annual leave into the next leave year. Accumulated annual leave is forfeited when it exceeds the maximum amount and is not used before the end of a leave year. Section 6304(d)(1) specifies forfeited annual leave may be restored when it was lost because of administrative error, or when the leave was scheduled in advance and was lost because of the exigencies of the public business or the sickness of the employee. OPM leave regulations at 5 CFR 630.308(a) require that, before forfeited annual leave may be considered for restoration, use of the annual leave must have been scheduled in writing before the start of the third biweekly pay period prior to the end of the leave year. AFI36-815 states:

2.3.1. Scheduling Annual Leave. Employees must take positive action before the beginning of the third full pay period prior to the end of the leave year to schedule or reschedule canceled leave so as to avoid situations where employees approach the end of the leave year with a significant amount of annual leave that must be used or forfeited. Written leave schedules will be used to certify proper scheduling had been accomplished when requesting restoration of forfeited annual leave....

AFI36-815, 2.4., also states:

Except in cases of emergency, annual leave must be requested by the employee and approved by the appropriate leave-approving official in advance of the absence...Requests for annual leave shall be submitted to the approving official on an OPM 71 or other appropriate form.

Compensation and leave claims are settled based on the written record which includes the submissions by the claimant and the agency (see 5 CFR 178.105). The AAR shows the claimant was provided a copy of the agency's report to OPM and did not submit additional information to OPM in response to the AAR.

The record fails to reflect that the claimant's leave was scheduled in writing before the start of the third biweekly pay period prior to the end of the leave year; i.e., requested and approved, as required by statute and regulation. The claimant provided a document labeled "Projected Leave Schedule" with a fax date of December 14, 2006. This document was the second page of a fax containing the claimant's January 5, 2007, internal agency request for restoration of leave, which was endorsed by the claimant's supervisor and sent to the servicing human resources office. See OPM file number 00-0012, October 20, 2000. Thus, further inquiry is unnecessary with regard to whether the claimant's leave was canceled due to exigencies of the service since the documentation submitted by the claimant fails to meet the regulatory requirements at 5 CFR 630.308(a) and established agency leave administration requirements in AFI36-815 for requesting and receiving approval for the restoration of forfeited annual leave due to exigencies of the service.

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