

**U.S. Office of Personnel Management  
Compensation Claim Decision  
Under section 3702 of title 31, United States Code**

**Claimant:** [name]

**Organization:** Department of Veterans Affairs (VA)  
Veterans Health Administration  
[agency component]  
[city & State]

**Claim:** Request for compensatory time for  
travel

**Agency decision:** Denied

**OPM decision:** Denied

**OPM file number:** 11-0008

//Linda Kazinetz for

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

9/20/11

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Date

The claimant currently occupies [position] with the Department of Veterans Affairs (VA), [agency component] in [city & State]. Through his representative, he requests that the U.S. Office of Personnel Management (OPM) review his claim for compensatory time for travel for the period October 18, 2009, to March 27, 2010. OPM received the initial claim request on May 20, 2010, but by letter dated July 1, 2010, notified the claimant's representative the claim could not be accepted until receipt of a final agency decision. The VA issued a final written decision to the claimant's representative on September 29, 2010. OPM received the agency administrative report on March 8, 2011, additional information from the agency on June 27, 2011, and additional information from the claimant's representative on July 6, 2011. For the reasons discussed herein, the claim is denied.

The record shows that after an extended absence, the claimant began a detail on October 14, 2009, from his previous position of record at the [city & State] VA Medical Center to VISN [number] in [city & State] as a [position]. The assignment included travel and per diem during the period of the detail. On April 13, 2010, the claimant submitted 23 requests to the VISN [number] for compensatory time for travel for the period October 13, 2009, to April 1, 2010<sup>1</sup>. VISN [number] denied the claimant's requests for compensatory time for travel performed prior to March 28, 2010, because they were not submitted within 15 calendar days after the completion of the authorized travel. The claimant asserts that he should have received compensatory time for travel even though he submitted the requests more than 15 calendar days after the completion of the authorized travel. He states he became aware on or about April 7, 2010, of his opportunity to request compensatory time for travel. .

Under section 550.1404(a) of title 5, Code of Federal Regulations (CFR), an agency must credit an employee with compensatory time off for travel in a travel status if (1) the employee is required to travel away from the official duty station and (2) the travel time is not otherwise compensable hours of work under other legal authority. Section 550.1405(b) of title 5, CFR, states:

An employee must comply with his or her agency's procedures for requesting credit of compensatory time off under this section. Employees must file such requests within the time period required by the agency. An employee's request for credit of compensatory time off for travel may be denied if the request is not filed within the time period required by the agency.

VA Handbook 5007/31, Part VIII, Chapter 15, Paragraph 5 states:

[i]n order to request credit of compensatory time off for travel, employees must complete and submit VA Form 0861, Request for Credit of Compensatory Time Off for Travel, to the appropriate certifying official within 15 calendar days after completion of authorized travel. Requests after 15 calendar days may not be accepted unless the employee is prevented from submitting the form in a timely manner.

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<sup>1</sup> The dates submitted by the claimant identifying the period in question are different from the dates submitted by the agency. The AAR states the claimant submitted requests for compensatory time for travel for the period of October 18, 2009 – April 9, 2010. Further, the agency has repeatedly asserted that the claimant's requests for compensatory time for travel completed on or after March 28, 2010 were approved. Claimant did not dispute this.

In the claim request, the claimant's representative states the claimant was unaware of his entitlement to submit requests for compensatory time for travel and asked a travel program assistant about this entitlement on April 7, 2010. The claimant's representative states the travel program assistant replied he had no knowledge of the benefit. A copy of the April 7, 2010, email from the claimant to the "travel program assistant" (titled Transportation Assistant on his email signature block), subsequently provided by the claimant's representative at our request, shows the claimant asked whether he could "apply for comp time for travel between [his] official duty station ([city]) and temporary duty station ([city])<sup>2</sup>." The claimant's representative stated the claimant could not locate the return email, but that the claimant "recalls the reply as a one line email that stated, "I know nothing about that.""

The claimant's rationale appears to ask for relief as a matter of equity; i.e., the claimant's request for compensatory time for travel should not be held untimely since the claimant was not aware that he could request this employee benefit. However, the claims jurisdiction of OPM is limited to consideration of legal and regulatory liability. OPM has no authority to authorize payment based solely on consideration of equity.

Even if they have no actual knowledge, Federal employees are charged with constructive knowledge of statutory requirements pertaining to them and of the implementing regulations authorized to be issued by statute. See B-173927, October 27, 1971; B-187104, April 1, 1977; and B-192510, April 6, 1979. We also find it reasonable to conclude the claimant is properly held to have imputed knowledge of compensatory time for travel and its application requirements. See B-174301, October 22, 1971; B-184624, August 5, 1976; and B-206846, September 28, 1982.

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. Where the agency's factual determination is reasonable, we will not substitute our judgment for that of the agency. See, e.g., *Jimmie D. Brewer*, B-205452, Mar. 15, 1982, as cited in Philip M. Brey, B-261517, Dec. 26, 1995. For travel prior to March 28, 2010, the claimant did not submit requests for compensatory time for travel within the prescribed 15 days as required by VA Handbook 5007/31, Part VIII, Chapter 15. Therefore, the claim is denied.

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.

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<sup>2</sup> [city & State] is a suburb of [city & State].