

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

Claimant: [name]

Organization: [agency component]
Missile Defense Agency
U.S. Department of Defense
[installation & State]

Claim: Annual leave accrual rate

Agency decision: Denied

OPM decision: Denied

OPM file number: 12-0029

/s/ Judith A. Davis for

Robert D. Hendler
Classification and Pay Claims
Program Manager
Merit System Audit and Compliance

5/2/13

Date

The claimant is a Federal civilian employee of the [agency component], Missile Defense Agency (MDA), U.S. Department of Defense, at [installation & State]. He requests the U.S. Office of Personnel Management (OPM) reconsider his agency's denial of his request for a higher annual leave accrual rate. We received the claim on July 17, 2012, and the agency's administrative report (AAR) on November 15, 2012. For the reasons discussed herein, the claim is denied.

Section 6303 of title 5, United States Code (U.S.C.), sets the annual leave accrual rates for Federal civil service employees. Section 6303(a) authorizes four hours per pay period for employees with less than three years of service, six hours for employees with three to 15 years of service, and eight hours for employees with 15 or more years of service. Section 6303(a) also restricts the amount of leave that may be accrued by military retirees, providing annual leave accrual credit only under certain limited circumstances such as for actual service during a war declared by Congress or while participating in a campaign or expedition for which a campaign badge is authorized.

The claimant was officially appointed to his current position with the MDA on December 6, 2010. Prior to his appointment, the MDA's human resources office (HRO) sent a November 18, 2010, email to the claimant (subject: Firm Job Offer) erroneously stating he would earn eight hours of annual leave per pay period based on his having served 18 years in the military from August 1976 to September 1994. The claimant subsequently reviewed his Standard Form 50 appointment document, noting the service computation date (SCD) and the length of creditable military service recorded on the form reflected his earning six, instead of eight, hours of annual leave per pay period.

The agency acknowledges that, because the claimant is a military retiree, the initial SCD crediting the entirety of his military service was incorrect. Their subsequent calculation credited only the military service time spent on a campaign or expedition, thus reducing the length of his creditable military service to four years and one month and resulting in his accruing only six hours of annual leave. The claimant does not disagree with the agency's calculation of his military service credit for leave accrual.

After identifying the error, the agency's HRO considered granting service credit, as provided by 5 U.S.C. 6303(e), to the claimant for his prior non-Federal work experience and active duty in the uniformed service for the purpose of determining his annual leave accrual rate. After considering his prior non-Federal experience and service, the agency determined his qualifying experience is equivalent to 12 years and 3 months of private industry experience, permitting an accrual rate of eight hours per pay period when combined with his military service credit. The HRO notified the claimant's supervisor in a July 2011 email of their intent to amend his SCD leave date to reflect the additional service credit, to be effective July 3, 2011. The Defense Logistics Agency (DLA) processes various administrative actions for the MDA. The request to amend the claimant's service credit was sent to the DLA but was uncompleted. The agency's June 25, 2012, decision explains:

Under 5 U.S.C. 6303(e) and the Office of Personnel Management guidelines, DLA determined that they are bound by statute and they could not process the request to amend your service computation date because you were already on duty and the service credit cannot be made retroactively.

The agency's AAR further states:

[The claimant's] supervisor submitted a Creditable Service for Annual Leave Accrual request prior to [the claimant] entering on duty. However, since the MDA HRO determined that [the claimant] would receive credit for his eighteen (18) years of creditable military service, the service credit did not go through the approval process.

* * * * *

MDA HRO submitted the corrected information to DLA. DLA determined that the leave credit must be approved prior to the employee's effective date and would not correct the Service Computation Date (SCD). [The claimant] was informed that the Service Computation Date (SCD) can only be adjusted after an employee is hired if the inaccurate SCD is due to an administrative error (such as a transcription error). It was further explained that DLA would not correct the error MDA HRO made because it does not meet the definition of administrative error.

The claimant and agency seek a similar remedy. The claimant requests his annual leave accrual rate be increased to eight hours per pay period, while the agency specifically asks OPM for "approval of 12 years and 03 months of private industry experience with an effective date of the first pay period" as stated in the AAR.

Section 630.205(a) of title 5, Code of Federal Regulations (CFR), states that the head of an agency or his or her designee may, at his or her sole discretion, provide an employee with credit for prior non-Federal work experience or military service when determining: (1) the employee possesses skills and experience essential to the new position, which were acquired through performance in a position having duties directly related to the duties of the position to which he or she is being appointed; and (2) the skills and experience are necessary to achieve an important agency mission or performance goal. Section 630.205(d) further states the agency head or designee must make the determination to approve an employee's qualifying prior work experience *before the employee enters on duty*.

Section 630.205 of title 5, CFR, sets forth basic eligibility criteria for granting employees service credit for prior non-Federal work experience or military service. Within the scope of these regulations, the head of an agency may issue further implementing instructions for the guidance of the agency with regard to the granting of and accounting for service credit determinations under 5 U.S.C. § 6303(e). Agency implementing guidance and instructions such as that contained in Department of Defense Instruction (DoDI) 1400.25, Volume 631, and MDA's Creditable Service for Annual Leave Accrual Fact Sheet, dated March 2010, may impose additional requirements. The plain language of the statute concerning its discretionary nature and when service credit decisions are to occur is reinforced by both the DoDI and fact sheet.

For example, DoDI 1400.25 states:

Authorized management officials exercising the discretionary authority to authorize service credit for prior work experience shall justify and document the reasons for granting such credit pursuant to this Volume in writing prior to the effective date of the applicant's entry on duty.

This is further emphasized on page one of the MDA fact sheet, stating, in part:

This hiring flexibility may be used to attract highly qualified candidates into hard-to-fill or mission critical positions.

Annual leave service credit must be approved **before** effective date of selectee's initial appointment or reappointment.

Service credit cannot be approved retroactively for current employees.

Section 630.205(d) of title 5, CFR, requires an employee to provide written documentation acceptable to the agency of prior work experience or from the military of the uniformed service before a creditable service determination request can be considered. In this instance, the agency states the claimant's supervisor submitted a "Creditable Service for Annual Leave Accrual request" before the claimant's December 6, 2010, appointment. Had the claimant submitted the written documentation required by 5 CFR 630.205(d) to request a determination of his service credit prior to his appointment, a decision would have properly been made at that time as to whether his prior non-Federal work experience or military service met the requirements established by 5 CFR 630.205 and implementing guidelines in determining his annual leave accrual rate. However, consideration of his prior non-Federal work experience or military service was not made until after his appointment. There is no authority under which a service credit determination can be made retroactive. Section 630.205 of title 5, CFR, in addition to the agency's implementing guidance and instructions, provides for no situations under which service credit determinations can be approved after the effective date of an employee's appointment. Accordingly, the claim is denied.

The claimant attempts to equate the agency's emailed job offer to a contract, stating the MDA breached the terms of a contract he accepted in good faith and relied on to his detriment. However, it is well settled by the courts that a claim may not be granted based on misinformation provided by agency officials. Payments of money from the Federal Treasury are limited to those authorized by statute, and erroneous advice given by a Government employee cannot estop the Government from denying benefits not otherwise permitted by law. See *OPM v. Richmond*, 496 U.S. 414, 425-426 (1990); *Falso v. OPM*, 116 F.3d 459 (Fed.Cir. 1997); and 60 Comp. Gen. 417 (1981). Therefore, that the claimant was initially told he would accrue eight hours of annual leave per pay period does not confer eligibility not otherwise permitted by statute or its implementing regulations.

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.