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

Claimant: [name]

Organization: [agency component]
Walter Reed Army Medical Center
Department of the Army
Washington, DC

Claim: Credit for uniformed service for Purposes of service computation date-leave under 5 CFR § 630.205

Agency decision: Denied

OPM decision: Denied

OPM file number: 08-0093

_/s/ for_____
Robert D. Hendler
Classification and Pay Claims
Program Manager
Center for Merit System Accountability

_9/22/2008_____
Date

The claimant occupies [position] in the [agency component], Walter Reed Army Medical Center, Department of the Army (DA), in Washington, DC. He seeks assistance from the U.S. Office of Personnel Management (OPM) to credit his entire period of military service for purposes of service computation date-leave (SCD-Leave) under the provisions of section 630.205 of title 5, Code of Federal Regulations (CFR). OPM received claim requests on September 15, 2006, and December 28, 2006, but declined to take action because there was no evidence a final agency-level denial had been issued. OPM received a copy of the April 21, 2008, final agency-level denial on May 12, 2008. For the reasons discussed herein, the claim is denied.

In his initial August 28, 2006, claim request to OPM, the claimant states on or about August 6, 2008, his SCD leave was erroneously changed from January 3, 1986, to August 8, 2005. He asserts:

> During the recruitment process, I negotiated with the **personnel department** at the Walter Reed Army Medical Center for two things: (1) being hired at grade 12 step 5 (rather than grade 12 step 1) and (2) receiving credit for additional leave. I was informed my request for grade 12 step 5 was denied.
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> When I was offered my current position, I was informed that based on my prior experience, and on the difficulty the Department had in filling the position, I would be credited for my years of military service, pursuant to 5 CFR 630. This credit was correctly reflected on my appointment SF-50….
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> **********
> Base on my understanding of 5 CFR 630.205 it is clear there is legal authority for the conditions under which I was hired, and which were accurately reflected on my SF-50 [Notification of Personnel Action] specifically that my service computation date be January 3, 1986-and that I be credited with leave accrual in the amount of 8 hours per pay period.

The claimant also requested leave deducted from his leave balance based on the change to his SCD leave be restored.

In its April 21, 2008, response to the claimant's January 30, 2008, agency-level claim request, DA stated:

> Effective October 18, 2006, the final OPM regulations make clear that the authority to afford the service credit cannot be applied retroactively for employees who have already entered on duty. You were appointed on August 8, 2005. At the time of your appointment, continuing to the present, only the Secretary of the Army has exercised this authority for the Department of the Army. No other official has had the authority to make a promise or guarantee with respect to the benefit. Likewise, an employee who has entered on duty may not make or have this as a condition of acceptance of an appointment. Therefore, a request to retroactively adjust your service computation date for annual leave accrual cannot be granted.

The claimant appears to assert that, because legal authority existed to provide credit for uniformed service in determining his annual leave accrual rate, he was informed by the servicing human resources office he would receive credit for his uniformed service, and his appointment SF-50 reflected credit for 19 years and 7 months military service, the agency committed an "administrative error" when it subsequently changed his SCD leave to August 5, 2005, as the result of removing the previous credit for his military service.

It is well settled that "[t]he starting point for interpretation of a statute is the language of the statute itself," and "[a]bsent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive." *Kaiser Aluminum & Chemical Corp. v. Bonjorno*, 494 U.S. 827, 835, 110 S. Ct. 1570, 1575 (1990), citing *Consumer Product Safety Commission v. GTE Sylvania, Inc*., 447 U.S. 102, 108, 100 S. Ct. 2051, 2056 (1980). The language of 5 U.S.C. § 6303(e) for crediting uniformed service not otherwise creditable under 5 U.S.C. § 6303(a) for purposes of leave accrual is permissive. The discretionary nature of this decision is made clear under 5 CFR 630.205(a): "The head of an agency or his or her designee may, at his or her sole discretion, provide credit…." Although the claimant was eligible to receive credit as otherwise permitted by the statute and implementing regulations (covered employees appointed on or after April 28, 2005), DA was not obligated to provide such credit to the claimant.

The claimant also seeks to estop the Federal Government from denying him benefits because he relied on his appointing human resources office's assurance he would receive credit for his uniformed service as previously discussed. However, as noted in the final agency-level claim denial, no official other than the Secretary of the Army had or currently has authority to grant service credit under 5 CFR 630.205(a). It is well settled the Government cannot be estopped from denying benefits that are not permitted by law, even where the claimant relied on mistaken advice from a Government official or agency. A claim for payment of money from the U.S. Treasury contrary to a statutory appropriation is prohibited by the Appropriations Clause of the Constitution, Art. I, 9, cl. 7. Recognition of equitable estoppel could nullify the clause if agents of the Executive were able, by their unauthorized oral or written statements, to obligate the U.S. Treasury contrary to the wishes of Congress. *See Office of Personnel Management v. Richmond*, 496 U.S. 414 (1990), *Falso v. Office of Personnel Management*, 116 F.3rd 459 (Fed Cir. 1997), and *Melvin Ackley, Jr*, B-200817, April 21, 1981. Therefore, the claimant's request for equitable estoppel must be denied.

We also find the claimant's assertion that all 19 years and seven months of his uniformed service should have been creditable to be unsupportable. Such service is potentially creditable only if it was "performed in a position the duties of which *directly* [emphasis added] relate to the duties of the position to which such employee is so appointed" and only when "in the judgment of the head of the appointing agency [crediting such service] is necessary in order to achieve an important agency mission or performance goal." 5 U.S.C. § 6303(e). Thus, we do not find it credible that all 19 years and seven months of the claimant's military service, including basic training, would have been potentially creditable as the claimant appears to assert.

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, supra.

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.