

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

**Claimant:** [name]

**Organization:** [agency component]  
U.S. Department of Veterans Affairs  
(VA)  
[city & State]

**Claim:** Family and Medical Leave Act (FMLA)

**Agency decision:** N/A

**OPM decision:** Denied; Barred by res judicata

**OPM file number:** 10-0027

//Judith A. Davis for

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

5/19/10

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Date

The claimant, formerly employed in a Medical Instrument Technician (EKG), GS-649-4, position, with the [agency component] seeks help from the U.S. Office of Personnel Management (OPM) regarding FMLA leave she states was denied by her agency on November 18, 2003. OPM received the claim request on February 16, 2010, and additional information from the agency on April 8, 2010. For the reasons discussed herein, the claim is denied.

The claimant states that on November 18, 2003, she gave birth to a baby boy and:

OCT-3-2003 I SUMIT [sic] A FS [sic] 71 REQUESTING FAMILY LEAVE TO MY SUPERVISOR [name] @ [agency component] WHICH [sic] I HAD WORKED THERE FOR 19 YEARS. SHE DENIED FAMILY LEAVE ON NOV-18-2003. I TRYED [sic] TO CONTACT [name] BUT I WAS UNABLE. I WAS PUT ON AWOL AND REMOVE [sic] FROM MY [sic] DUTY ON 4-23-04. HAVE BEEN THROUGH THE CHAIN OF COMMAND IN 2007[.] WAS PLACED IN SUPREME COURT IN MAY 2007[.] TO THIS DAY I HAVE NOT HEARD FROM THE COURT.

As discussed in *Stearn v. Department of the Navy*, 280 F.3d 1376 (Fed. Cir 2002):

Under the doctrine of res judicata, a final judgment on the merits of an action precludes the parties from relitigating issues that were or could have been raised in that action. *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 398, 69 L. Ed. 2d 103, 101 S. Ct. 2423 (1981)...The doctrine serves to “relieve parties of the cost and vexation of multiple law suits, conserve judicial resources, and...encourage reliance on adjudication.” *Allen v. McCurry*, 449 U.S. 90, 94, 66 L.Ed. 2d308, 101 S.Ct. 411 (1980).

In the instant case, the MSPB rendered a judgment on the merits of the claim before us on July 28, 2005. The MSPB decision was affirmed on appeal. [claimant] v. VA, Case No. [number] (CA Fed. Cir., April 5, 2006) (nonprecedential):

We see no error in the Board’s decision in this case. The Board’s finding that [claimant] was AWOL and failed to follow proper leave procedures from November 19, 2003, to December 29, 2003, is supported by substantial evidence. While there is no question that the birth of a child entitles an employee to leave under the Family Medical Leave Act, see 5 U.S.C. § 6382(a)(1)(A) (2000), it is still necessary for the employee to “provide the employing agency with not less than 30 days’ notice, before the date the leave is to begin, of the employee’s intention to take leave under such subparagraph, except that if the date of the birth . . . requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable.” 5 U.S.C. § 6382(e) (2000). In this case, there is no dispute that [claimant] was absent from November 19, 2003, to December 29, 2003, and there is also no dispute that she did not provide the proper medical documentation or request leave at any point either before or after her absence.

Thus, this claim is barred by res judicata.

This OPM settlement of the claim 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.