

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

**Claimant:** [name]

**Organization:** Office of Surface Mining Reclamation  
and Enforcement  
U.S. Department of the Interior  
Washington, DC

**Claim:** Restoration of annual leave

**Agency decision:** Denied

**OPM decision:** Denied

**OPM file number:** 10-0050

//Judith A. Davis for

---

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

2/24/2011

---

Date

The claimant is currently employed as [position] in the Office of Surface Mining Reclamation and Enforcement (OSM), U.S. Department of Interior, in Washington, DC. He seeks the restoration of 104 forfeited annual leave hours for the 2009 leave year. The U.S. Office of Personnel Management (OPM) received the initial claim request on August 18, 2010, and the agency administrative report (AAR) on December 9, 2010. For the reasons discussed herein, the claim is denied.

On October 8, 2009, the claimant requested approval for use of 200 hours of use-or-lose annual leave for calendar year 2009 from [supervisor]. A signed copy, indicating approval of the requested leave by the [supervisor], was returned to the claimant on October 16, 2009.

On three separate occasions thereafter, the claimant submitted e-mails to the [supervisor] describing reasons why he believed some of the requested use-or-lose leave needed to be cancelled. However, the supervisor did not respond to any of the claimant's written communications. The claimant worked throughout the approved scheduled leave period and subsequently forfeited 104 annual leave hours at the end of the leave year.

Forfeited annual leave can be restored under the limited circumstances set out in section 6304(d)(1) of title 5, United States Code (U.S.C.), which provides:

(d)(1) Annual leave which is lost by operation of this section because of –

“(A) administrative error when the error causes a loss of annual leave otherwise accruable after June 30, 1960;

“(B) exigencies of the public business when the annual leave was scheduled in advance;

“(C) sickness of the employee when the annual leave was scheduled in advance;

shall be restored to the employee.

The claimant submitted copies of documents he sent to the [supervisor] conveying his view that, due to workload, his scheduled leave would “necessarily need to be cancelled.” The claimant states the [supervisor] did not respond to his “written communications, and failed to act on them.” The claimant states that if the [supervisor] had any questions or reservations about his “proposed leave cancellation requests, these were not communicated to him and, as a result, he was unable to use the scheduled 2009 annual leave, and subsequently forfeited the 104 hours at year end.” To support this claim, the claimant cites “B-192494, July 30, 1979, COMP. GEN 684; and B-200027, August 24, 19810[sic], a failure to act on the part of the exigency determination official has been deemed to constitute an administrative error on the part of the agency.”

The claimant misconstrues the meaning of the previously cited claim decisions. In B-192494, the matter at issue concerned whether a public exigency determination was submitted to the proper official in advance of the cancellation of leave: “Since [the claimant] submitted a formal and timely request for leave which was approved by his supervisor, the question of whether a

public exigency existed should have been submitted to the proper official when his supervisor cancelled that leave.” The Comptroller General determined that failure to submit it to the proper official constituted an administrative error. In B-200027, the employee forfeited annual leave scheduled in advance since he was assigned to attend a training seminar:

The determination that the exigency was of such importance as to preclude the use of scheduled leave is to be made by an agency official as described in 5 C.F.R.[Code of Federal Regulations] § 630.305 (1980). However, we have held that it is immaterial if an appropriate agency official has not made a determination as to an exigency since a failure to present the case to a proper official for an exigency determination constitutes an administrative error which would allow restoration of annual leave. See Norbert A. Shepanek, 58 Comp. Gen. 684 (1979).

Conversely, in this case the claimant shared his view with the proper official, [supervisor], that exigencies of public business warranted cancellation of the claimant’s annual leave. However, the proper official declined to make such a determination.

In her February 22, 2010 memorandum to the claimant denying his request for annual leave restoration, the [supervisor] stated:

As you know, I did not determine that any exigencies of business required you to forego your approved leave. I did not disapprove, in writing or otherwise, your previously approved leave, nor did I require you to work during a period for which you had been granted leave. The decision to not take leave was yours.

Section 630.305 of title 5, Code of Federal Regulations, states “the determination that an exigency is of major importance and that therefore annual leave may not be used by employees to avoid forfeiture must be made by the head of the agency or someone designated to act for him or her in this matter.” The AAR includes OSM’s Restoration of Annual Leave Request Procedures which state in pertinent part:

**Exigency of the Public Business**

The supervisor determines that an exigency—i.e., an urgent need for the employee be at work—is of major importance and that excess annual leave cannot be used.

\* \* \* \* \*

Supervisors: Shall determine when approved annual leave requests are denied. Shall notify the employee in writing with the reasons(s) for the disapproval of approved leave.

\* \* \* \* \*

The supervisor must disapprove previously approved leave because of administrative error, exigency of public business, or sickness in writing. Written disapproved leave only will be used for leave restoration requests.

In his claim request, the claimant states that “[a]long with the Director, Deputy Director, and Regional Directors, he [the claimant] also serves as the leave exigency determination official for approximately 20% of OSM’s workforce.” Therefore, it is reasonable to conclude the claimant was well aware of OSM’s leave cancellation and restoration procedures described above. Thus, we find the [supervisor's] silence on the claimant’s repeated attempts to have her cancel his annual leave put the claimant on notice that no such cancellation would be forthcoming. Therefore, we find the agency’s position in denying the claimant’s request for leave restoration is supported by controlling regulation and agency procedures. Accordingly, the claim is denied.

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.