

Date: September 8, 2003
Claimant: [name]
File Number: 03-0010
OPM Contact: Deborah Y. McKissick

The claimant was an employee of the Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior. The claimant is appealing the agency's decision to deny annual and sick leave for the pay period ending April 6, 2002. The Office of Personnel Management (OPM) received the claim on November 21, 2002 and received the agency administrative report on April 14, 2003. For the reasons discussed herein, the claim is denied.

The claimant and the agency agree that the claimant retired from the Federal government on April 1, 2002. However, the claimant believes he earned and is entitled to accrue leave for six days of the pay period ending April 6, 2002. The agency stated that the claimant was not on the agency's payroll for the full pay period ending April 6, 2002 and is not entitled to accrue leave for the pay period.

Section 630.202(a) of title 5 of the Code of Federal Regulations (CFR) states that "A full-time employee earns leave during each full biweekly pay period while in a pay status or in a combination of a pay status and a nonpay status. An employee must be paid on other than a biweekly pay period basis to earn leave on a pro rata basis for a full pay period. See 5 CFR § 630.203. An employee may earn leave on a pro rata basis for each fractional pay period that occurs within the continuity of his employment. See 5 CFR § 630.204. Section 6302 of title 5 of the United States Code states that "an employee is deemed employed for a full biweekly pay period if he is employed during the days within that period, exclusive of holidays and nonworkdays established by Federal statute, Executive order, or administrative order, which fall within his basic administrative workweek." The claimant worked and was paid on a biweekly pay period and as a result of his retirement he was removed from the agency's payroll within the pay period ending April 6, 2002.

OPM does not conduct adversary hearings, but settles claims on the basis of the evidence submitted by the claimant and the written record submitted by the government agency involved in the claim. 5 CFR 178.105; *Matter of John B. Tucker*, B-215346, March 29, 1985. Moreover, the burden of proof is on the claimant to prove the liability of the government and his or her right to payment. 5 CFR 178.105; *Matter of Jones and Short*,

5 CFR 178.105; *Matter of Staff Sergeant Eugene K. Krampotich*, B-249027, November 5, 1992; *Matter of Elias S. Frey*, B-208911, March 6, 1984; *Matter of Charles F. Callis*, B-205118, March 8, 1982. When the claimant retired on April 1, 2002, he was no longer an employee of the agency and not entitled to accrue leave for the pay period ending April 6, 2002. Hence, the claim is denied.

This settlement is final. No further administrative review is available within the Office of Personnel Management. Nothing in this settlement limits the claimant's right to bring an action in an appropriate United States Court.