

Date: December 8, 2003
Claimant: [name]
File Number: 03-0022
OPM Contact: Deborah Y. McKissick

The claimant requests credit for his military service in the determination of his leave accrual rate. He is employed as a [position] with the Command, Naval Meteorology and Oceanography Command. The Office of Personnel Management (OPM) received the claim on March 11, 2003 and the agency administrative report on May 29, 2003. For the reasons discussed herein, the claim is granted.

The claimant and the agency concur, that the claimant was appointed to a Federal civilian position, effective June 3, 2002, while on terminal leave from the military.* He retired from the United States Naval Reserve on August 1, 2002.

The administrative report states that the agency believes that "granting [the claimant] credit for his entire period of active duty military service is inconsistent with the intent of 5 U.S.C. § 6303(a). To grant him a benefit superior to that which other military retirees would receive based on the happenstance that his civilian service is inequitable...."

Congress has limited the circumstances under which military retirees may receive credit for their military service in the computation of their leave accrual rates. However, these limitations do not apply to individuals who have not retired from military service at the time of their appointments to civilian positions. See the Dual Compensation Act, Pub. L. No. 88-448, § 203, 5 U.S.C. § 6303(a). It is well established that an individual placed on terminal leave is on active military duty and is not in a retired status. See *Major James D. Dunn*, B-251084, October 12, 1993; 56 Comp. Gen. 855 (1977); and 45 Comp. Gen. 180 (1965). Accordingly, the claimant is entitled to credit for his military service in determining his leave accrual rate during the period of his civilian employment prior to August 1, 2002, the effective date of his military retirement.

* As explained by the United States Court of Claims, *terminal leave* is "a leave of absence granted an officer at the end of his period of military services; a permission to be absent from duty." *Terry v. United States*, 120 Ct. Cl. 315 (1951). Prior to 1945, under the leave laws then in effect, leave of up to 60 days without deduction from pay and allowances could be taken by Army officers at the discretion of the Secretary of War. 56 Comp. Gen. 855 (1977).

OPM does not conduct investigations or adversary hearings in adjudicating claims, but relies on the written record presented by the parties. *Frank A. Barone*, B-229439, May 25, 1998. Where the record presents an irreconcilable factual dispute, the burden of proof is on the claimant to establish the liability of the United States. *Jones and Short*, B-205282, June 15, 1982. Since the claimant's appointment to a Federal civilian position was effective before his retirement date from the military, he is entitled to full credit for his active military service through August 1, 2002. For purposes of service calculation, the claimant's military service is creditable through June 2, 2002, the last day of his active duty prior to civilian employment, at which time he began earning service credit based on his civilian employment. Accordingly, the claim is granted.

This settlement 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.