

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

Claimant: [name]

Organization: [agency component]
DA Area Support Activity
Seoul, Korea.

Claim: Request to Extend Restored Leave

Agency decision: Denied

OPM decision: Denied

OPM contact: Robert D. Handler

OPM file number: 06-0010

/s/ for

Robert D. Handler
Classification and Pay Claims
Program Manager
Center for Merit System Accountability

12/28/2006

Date

The claimant is currently employed as [position] with the [agency component], Department of the Army (DA) Area Support Activity, located in Seoul, Korea. She requests the Office of Personnel Management (OPM) reverse DA's decision to deny her request to extend her previously restored annual leave beyond the current two year time limit. Although not raised in her request to OPM, the record shows the claimant alternatively requested payment for the forfeited leave. We received her claim on November 9, 2005, and the initial agency administrative report (AAR) on February 2, 2006. The claimant and DA provided additional documentation at our request. The claim is denied for reasons discussed herein.

The claimant asserts the agency granted her 939 hours of restored annual leave, accumulated over a period of time between 1993 and 1999, due to her employment at a closing installation and her designation as an essential employee supporting three military deployments. On November 22, 2004, the claimant formally requested her agency extend her restored leave beyond the expiration date and provided a plan for its use. In the request, she contends staff shortages and other circumstances prevented her from using the restored leave. The claimant cited Public Law (PL) 106-65, National Defense Authorization Act of Fiscal Year 2000, and asserted emergency essential employees are entitled to combat zone benefits including the restoration of annual leave. The claimant did not receive a formal answer from the agency regarding her request for extension and, as a result, followed up with an electronic mail (e-mail) request on January 12, 2005. The agency denied her request by e-mail message dated January 13, 2005, stating regulations did not allow an extension beyond the established time limit which it determined had expired on January 8, 2005.

The record shows the claimant was employed overseas at the U.S. Army Berlin Brigade, Berlin Command located in Germany which was an activity identified to close. As a result of the closure, the agency notified the claimant in a June 20, 1993, letter that her 1992 calendar year leave would be restored based on provision of PL 102-484, which allowed employees permanently assigned to an installation designated for closure during the period October 1, 1992, and December 31, 1997, to have their excess leave restored. As a point of reference, this provision found in 5 U.S.C. 6304(d) applied to the closure of Department of Defense (DoD) installations without reference to the requirement of such closure being pursuant to the Defense Base Closure and Realignment Act of 1990 (commonly referred to as closure due to the Base Realignment and Closure (BRAC) Commission process) in this case, the Berlin Brigade. The statute was amended in 1994 to specifically insert the reference to BRAC, which is limited to military installations "located within any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, or Guam." However, the October 1, 1992, through December 31, 1997, time frame also covered DoD installations not covered by BRAC.

The record indicates the agency restored 28 hours of leave. Then, in January 1994, the claimant transferred from the Berlin Brigade to the 222nd Base Support Battalion, in Baumholder, Germany, where she remained until March 2000. As a result, the employee's restored leave coverage under 5 U.S.C. 6304(d) ended when she moved to another DoD overseas installation and the two year time limit for using 416 hours or less restored leave in accordance with 5 CFR 630.306(b) was applicable. The claimant would have until the end of the 1996 leave year to use the 28 hours of annual leave in her restored account. We also note the claimant was not eligible

for payment for restored annual leave under 5 U.S.C. § 5551(c) since this provision, enacted by Pub. L. 104-201, did not come into effect until 1996. However, during this time period and before she had the opportunity to use the leave, the agency deployed her as an emergency essential employee to the locations and dates following:

Bosnia/Hungary	March 1996 – September 1996
Riyadh, Saudi Arabia	October 1998 - November 1998
Camp Able Sentry, Macedonia	March 1999 - September 1999

The claimant asserts in her claim that her Command restored her leave after each deployment based on her emergency essential status. However, there is no documentation in the record showing the authority used to restore her leave, how many hours was restored each time, or the expiration date for use of the leave.

In March 2000, the agency promoted and transferred the claimant to the Area I Support Activity, Unit #15707, located at Camp Red Cloud, Korea. On the February 7, 2003, the record shows the claimant requested all her leave be restored, again citing the Berlin base closure, the deployments, and her status as an emergency essential employee as the reason for the request. The command approved the restoration of the leave. However, the record does not indicate the official justification for leave restoration. The claimant's leave and earnings statement indicates a January 8, 2005, expiration date established for using the restored leave.

According to PL 106-65, National Defense Authorization Act of 2000, Section 1103 amended 5 U.S.C. 6304(d) provides that service by a Department of Defense emergency essential employee in a combat zone is an "exigency of the public business" for the purpose of restoring forfeited annual leave. Annual leave forfeited by an employee because of service in a combat zone will be automatically restored, whether it was scheduled in advance or not. According to the provisions, restored annual leave must be scheduled and used by the end of the leave year ending two years after the termination of the exigency of the public business.

The record shows the agency followed established procedures in denying an extension of the claimant's previously restored annual leave in accordance with 5 CFR 630.306. The regulation states that annual leave restored under 5 U.S.C. 6304(d) must be scheduled and used not later than the end of the leave year ending two years after the date of restoration of the annual leave forfeited because of administrative error; or the date fixed by the agency head, or his or her designee, as the termination date of the exigency of the public business that resulted in forfeiture of the annual leave; or the date the employee is determined to be recovered and able to return to duty if the leave was forfeited because of sickness. In the case of the claimant, the exigency ended once the claimant returned from Macedonia while employed in Germany. With her subsequent employment in Korea, no further exigency existed nor was there a reason for the agency to restore her leave.

In addition, the Comptroller General has ruled consistently that if restored leave is forfeited again, there is no legal authority for its further restoration. Any restored leave unused at the expiration of the established time limits is again forfeited with no further right to restoration. In addition, administrative error may not serve as the basis to extend the time limit for using restored annual leave. This is so even if the agency fails to establish a separate leave account, fix the date for the expiration of the time limit, or properly advise the employee regarding the rules

for using restored annual leave absent agency regulations requiring otherwise. (See Comptroller General opinions B-188993, December 12, 1977; B-213380, August 20, 1984; and B-256975, October 11, 1994.)

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.