

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

**Claimant:** [name]

**Organization:** [agency component]  
Department of the Air Force  
[installation & State]

**Claim:** Restoration of Forfeited Annual Leave

**Agency decision:** Denied

**OPM decision:** Denied

**OPM file number:** 09-0034

//Judith A. Davis for

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Robert D. Hendler  
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1/11/2010

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Date

On May 26, 2009, the Office of Personnel Management's (OPM) Center for Merit System Accountability received a claim seeking restoration of forfeited annual leave from [claimant]. The claimant is recently retired but was formerly employed at [installation & State]. In its July 31, 2009, administrative report the agency provided its rationale as to why the claim should be denied. For the reasons discussed herein, the claim is denied.

The claimant requests restoration of 54 hours of annual leave forfeited at the end of the 2008 leave year. He submitted a request for restoration of this leave to his agency on January 20, 2009, citing exigency of service; i.e., that workload demands prevented him from scheduling and using the leave. On May 12, 2009, the agency approved the restoration of only 8 hours of forfeited annual leave.

The claimant submitted a copy of Standard Form 71, Request for Leave or Approved Absence, dated August 28, 2008, wherein he requested 71 hours of annual leave from his supervisor for the periods September 2-4 and September 8-12, 2008. That leave request was disapproved because of "mandatory A-76 PWS year-end closeout." However, the agency submitted copies of the claimant's leave records showing he subsequently rescheduled and used 63 hours of annual leave before the end of the 2008 leave year. The agency restored the remaining 8 hours of annual leave from the August 28, 2008, leave request the claimant did not use before the end of the 2008 leave year. The claimant requests restoration of an additional 54 hours of forfeited annual leave.

Section 6304(d)(1)(B) of title 5, United States Code (U.S.C.), states annual leave which is lost because of exigencies of the public business *when the annual leave was scheduled in advance* shall be restored to the employee. Section 630.305 of title 5, Code of Federal Regulations (CFR), further stipulates that before annual leave may be restored under 5 U.S.C. § 6304, 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 on this matter*.

Air Force Instruction (AFI) 36-815, paragraph 2.10, Restoration of Forfeited Annual Leave, implements the above cited statutory and regulatory requirements as follows:

Annual leave which would otherwise be forfeited may be restored when it is lost because of exigencies of service or sickness of the employee, if use of the leave was scheduled in advance ... Before forfeited annual leave may be considered for restoration, use of the annual leave must have been requested, approved, and scheduled in writing before the start of the third biweekly pay period before the end of the leave year.

AFI 36-815, paragraph 2.10.1, Exigencies of the Service, reiterates that before forfeited annual leave is restored, there must be a determination that an exigency is of major importance and that an employee may not use scheduled annual leave, and specifically delegates authority to approve exigencies causing cancellation of leave to the Installation Commander, his or her designee, or heads of serviced organizations. Paragraph 2.10.2 prescribes the formal exigency of the service approval process and the documentation required to support the request.

Procedures for settling claims against the United States that may be settled by OPM are described in Part 178 of title 5, CFR. Under 5 CFR 178.105:

The burden is upon the claimant to establish the timeliness of the claim, the liability of the United States, and the claimant's right to payment. The settlement of claims is based upon the written record only, which will include the submissions by the claimant and the agency. OPM will accept the facts asserted by the agency, absent clear and convincing evidence to the contrary.

In order for forfeited annual leave to be restored based on exigencies of service, the leave must have been requested, approved, and scheduled in writing, and the determination of an exigency of service made by the Installation Commander or his designee. The first criterion was not met because the claimant has provided no documentation that he ever submitted a written request to schedule the 54 hours of forfeited leave, received approval of that request, and had the leave subsequently cancelled because of an exigency of service approved by the Installation Commander. The second criterion was also not met as workload demands and staffing shortages cited by the claimant do not in themselves establish exigency of service. This determination must be approved by the Installation Commander. Therefore, the statutory and regulatory requirements for restoration of forfeited annual leave are not met and the claim is accordingly denied. See Comp. Gen. 684 (1979); B-193567, May 24, 1979; B-191379, September 28, 1978; and B-187104, March 8, 1978.

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.