

NGFTS

National Guard Full-Time Support



HUMAN
RESOURCES
INFORMATION
LETTER



Oklahoma National Guard Human Resources Office

Joint Force Headquarters, Oklahoma National Guard
Oklahoma City, Oklahoma 73111-4398

No. 06-08
Date: 11 December 2006

Butterbaugh vs. Department of Justice

Subject: Administrative Claims for Annual Leave as a Result of the Decision in Butterbaugh vs. Department of Justice.

Note: HR Information Letters 05-04, 06-02 and 06-05 are rescinded.

References:

5 U.S.C. 6304(d)(1)(A)

5 U.S.C. 6323

5 CFR 630.306

Garcia v. Department of State, 2006 MSPB 29

Harper v. Department of Navy, 2006 MSPB 30
Uniformed Services Employment and
Reemployment Rights Act of 1994

Eligibility: Current, Separated and Retired National Guard (NG) Technicians

Effective Date: 1 October 2006

Use: To provide clarification and processing instructions concerning the case of Butterbaugh vs. Department of Justice.

1. In accordance with Principal Deputy Under Secretary of Defense (Personnel & Readiness) memorandum, Subject: Administrative Claims for Leave as a Result of the Decision in *Butterbaugh v Department of Justice*, 336 F.3d 1332 (Fed. Cir. 2003) dated 7 June 2006, the following information and application procedures are provided:

- a. In *Butterbaugh v. Department of Justice*, and two subsequent *Butterbaugh*-related decisions issued by the Merit Systems Protection Board (MSPB) on February 27, 2006, *Garcia v. Department of State*, 2006 MSPB 29 and *Harper v. Department of Navy*, 2006 MSPB 30 (*Garcia/Harper*). Affected personnel are individuals who were simultaneously Federal employees and (1) Reservists, including Military Technicians, or (2) members of the National Guard who may have been improperly charged military leave.
- b. In *Butterbaugh*, the United States Court of Appeals for the Federal Circuit reversed the Office of Personnel Management's (OPM) interpretation of section 6323 of title 5, United States Code, and held that, at least since section 6323 was amended in 1980, it has been clear that Federal employees are required to take military leave only for those days they are required to work in their civilian jobs. Accordingly, agencies should allowed 15 workdays of military leave for reserve training each year, instead of 15 calendar days, as was the practice in accordance with OPM's implementing regulation, until December 21, 2000, when section 6323 was again amended
- c. As a result of the *Garcia/Harper* decisions, DoD will process administrative claims back to October 1, 1980, the effective date of the amendment to 5 U.S.C. 6323(a) interpreted by the Court in *Butterbaugh*. Therefore, current Federal employees, as well as those who have retired or separated from the Federal government, who (1) were charged military leave, and (2) believe they have valid leave claims under *Butterbaugh* may file claims with the Federal agency that charged them leave.
- d. Those employees who have already filed claims and had their claims adjudicated, may submit amended claims that seek relief back to the first date they were improperly charged military leave after September 30, 1980.

e. As in all leave claims, the burden of proof is on the employee and it is not incumbent upon the Agency to research, collect, and provide employee with this proof.

2. A technician making a claim must submit their claim in writing using the revised form from Defense Finance and Accounting Service (DFAS) (Attachment 1) to the Joint Force Headquarters, ATTN: OKHR-ES (Butterbaugh vs. DOJ Claims), 3501 Military Circle, Oklahoma City, Oklahoma 73111-4398. All of the following documentation is required to be submitted with the claim:

- A copy of the order to military active duty for a continuous period of active duty that includes a weekend or non-workday.
- A copy of the certificate of attendance for each period of active duty listed above.
- A copy of the applicable civilian work schedule (if it was not a standards Monday through Friday) for the period(s) of active duty listed above, showing non-workdays.
- A copy of the time and attendance record or the leave record showing the charges to annual leave or leave without pay.
- Any other relevant documentation, in the absence of the above.

Employees will be credited one day of annual leave for each non-workday occurring within a period of active duty for which they were charged military leave. A maximum of four days (32 hours) of annual leave may be credited for each fiscal year.

3. Attachment 3 is provided in order to help technicians obtain payroll verification of use of military leave on non-workdays. The burden of proof in these claims remains with the technician. However, DFAS has offered to help obtain documents they may have on file. DFAS will not have any documentation prior to 1996. The technician should complete the form and fax it to (816) 926-5638.

4. Current, retired or separated technicians may submit a claim. Current technician's annual leave credited as a result of a technician's claim must be placed in a restored leave account. Any restored leave must be used by the end of the leave year beginning within 2 years after the date of restoration or the leave will be forfeited. Technicians who have retired or separated will receive a lump-sum payment for any annual leave re-credited as a result of that claim, paid at the rate of pay the technician was earning at the time of their retirement or separation.

Your points of contact are LtCol Shirley Kyles at (405) 228-5578 or Capt James Baxter at (405) 228-5527.

KENNETH W. CALHOUN
COL, IN, OKARNG
Director, Human Resources

**Administrative Claims for Annual Leave under Butterbaugh v. Department of Justice,
336 F .3d 1332 (Fed. Cir. 2003)
Appropriated fund employees**

NAME _____ SSN _____ DATE _____

NEW CLAIM _____ ADMENDED CLAIM _____

CURRENT MAILING ADDRESS _____

SERVICING PAYROLL OFFICE AND MAILING ADDRESS _____

(To be completed only by claimants who are still employed by the Federal government outside of the Department of Defense, who were payrolled by DCPS during the claim period). A corrected SF 1150 will be sent to the current agency for credit to the restored leave account).

CURRENT/LAST PAYROLL OFFICE AND CURRENT/LASTS EMPLOYING AGENCY _____

(See attachment 2 for translation of the Payroll Office Identification (ID) Number (POIN) shown on your DFAS Leave and Earnings Statement)

MAIL TO: DFAS-Indianapolis, Civilian Payroll, 8899 East 56th Street, Indianapolis, Indiana, 46249-1900

REQUIRED INFORMATION FOR EACH PERIOD OF ACTIVE DUTY ORDERS OR OTHER RELEVANT DOCUMENTATION:

ACTIVE DUTY DATES FROM: _____ TO: _____

ACTIVE DUTY DATES FROM: _____ TO: _____

ACTIVE DUTY DATES FROM: _____ TO: _____

REQUIRED SUPPORTING DOCUMENTATION (ATTACH TO CLAIM) – Claimant must show that annual leave or LWOP was used in the performance of Reserve duties because the agency deducted military leave for non-workdays or intervening weekends.

- A copy of the order to military active duty for a continuous period of active duty that includes a weekend or non-workday.
- A copy of the certificate of attendance for each period of active duty listed above.
- A copy of the applicable civilian work schedule (if it was not a standards Monday through Friday) for the period(s) of active duty listed above, showing non-workdays.
- A copy of the time and attendance record or the leave record showing the charges to annual leave or leave without pay.
- Any other relevant documentation, in the absence of the above.

ADDITIONAL INFORMATION (OPTIONAL)

- A copy of the leave and earnings statements that indicate charges to military leave which may include a weekend, non-workday or a charge to leave without pay.

I understand and accept that filing this administrative claim means the following: I have not filed a previous claim for the above periods nor have I received any other MSPB or agency settlement for these periods. I acknowledge that acceptance of restoration of leave or payment for leave based upon this administrative claim filed under these procedures will be a final settlement of all claims, no matter when they accrued, that I may have against the Government arising from military leave charged for non-workdays.

I further understand and accept that 1 day of restored annual leave will be given for each weekend day, non-workday, or day of leave without pay (LWOP) charged during my period of active duty performed. Any leave restored to my account must be used by the end of the leave year beginning within 2 years after the date of restoration or the leave will be forfeited, in accordance with 5 U.S.C. 6304(d)(1)(A) and 5 CFR 630.306.

SIGNATURE OF CLAIMANT _____ DATED _____

PRIVACY ACT STATEMENT: Authority for collection of this information is 5 U.S.C. Section 6411 and E.O. 9397. The purpose for which the information will be used is to administer and process your claim for leave restoration or payment. The information on this form may be disclosed as generally permitted under 5 U.S.C. Section 552a(b) of the Privacy Act, as amended. Providing this information is voluntary, however, failure to supply the required documentation may result in the denial of part or all of your claim.

PAYROLL OFFICE IDENTIFICATION (ID) NUMBER (POIN)

97380600	Charleston Payroll Office
97380700	Charleston Payroll Office
97381000	Charleston Payroll Office
97381100	Charleston Payroll Office
97381400	Charleston Payroll Office
97381500	Charleston Payroll Office
97380800	Denver Payroll Office – (OKNG Army Technicians)
97380100	Pensacola Payroll Office – (OKNG Air Technicians)
97380500	Pensacola Payroll Office
97381200	Pensacola Payroll Office

