

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. 07-01
Date: 2 April 2007

Additional Information Regarding Butterbaugh vs. Department of Justice Claims (Corrected)

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

Note: Refer to Human Resources Information Letter 06-08 for background information.

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 additional clarification concerning the case of Butterbaugh vs. Department of Justice.

1. There appears to be a perception by many current and former employees that they are entitled to restoration or payment of leave for each weekend or non-workday that they were charged military leave, regardless of whether or not they were harmed by the erroneous charging of "military leave".
2. This is not true, as the Merit Systems Protection Board (MSPB) has ruled in *Harper v. Department of the Navy*, 2006 MSPB 30 (February 27, 2006) and *Garcia v. State Department* 2006 MSPB 29 (February 27, 2006), that it is the employee's responsibility to provide evidence that he or she was harmed (had to use annual leave, leave without pay or other types of leave) to cover an absence on military duty as a result of being improperly charged military leave for non-workdays.
3. According to the cases cited above, the appellant/claimant must show that because he or she was improperly charged military leave for non-workdays, the claimant was required to use some other form of leave to cover future military duty. The harm arises because the claimant is denied the use of that other leave for its future intended purpose.
4. As an example of the above rule, if an employee performed military service on Monday 12 May through Saturday 25 May under the Office of Personnel Management (OPM) rules at the time, the federal employee who was also a guardsman was charged 12 days of "military leave" including the weekend period, which is typically civilian non-duty days. After the Butterbaugh decision, it was determined that the federal employee should have only been charged 10 days of military leave, because a federal employee whose work schedule is Monday through Friday is not required to perform work on Saturday and Sunday (19 and 20 May in this example).
5. However, per the MSPB decisions, there is no "harm" to the federal employee and the federal government is not liable for restoration of leave or payment for the days of leave unless the federal employee can prove he/she used all of their authorized military leave (15 days/120 hours) during the fiscal year and had to take annual leave or some other

form of leave for any subsequent military duty day. Each October 1, a federal employee who is still a reservist accrues 120 hours of military leave.

6. In the typical cases, reservists completed one 2-week annual tour per calendar year. Thus, even if the federal employee was charged for two days of military leave for the weekend in the middle of the two-week tour, this alone is not enough to show that the employee was harmed, and therefore is not entitled to restoration of leave or payment of annual leave. In essence, harm occurs after the member expends 15 days of military leave in the fiscal year and then had to use some other type of leave for additional military duty.

7. 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 standard 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.

8. 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.

9. Current, retired or separated technicians may submit a claim. Active technicians who receive leave from their claim will have it placed in a Restored Annual 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

REQUEST FOR DOCUMENTS IN SUPPORT OF BUTTERBAUGH V. DOJ

Name:
SSN:
Branch of Service: Air National Guard / Army National Guard (circle one)
DoD Component: Full Time National Guard Technician
Home Address: _____ _____ _____
Day Time Phone #:
Home Phone #:

1. Please forward to the above address any documents you have for the following period(s)

2. The documents will be used as evidence in the restoring of military leave as required for the processing of claims in the Butterbaugh v. DoJ decision.

Signature /Date