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STATE OF HAWAII
DEPARTMENT OF DEFENSE
OFFICE OF THE ADJUTANT GENERAL
3949 DIAMOND HEAD ROAD
HONOLULU, HAWAII 96816-4495

HIHRO-M

31 August 2005

MEMORANDUM FOR ALL HAWAII NATIONAL GUARD CURRENT AND FORMER FEDERAL TECHNICIANS

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

1. References.

- a. Memorandum, NGB-J1-TN, 11 Mar 2005, subject as above (Encl 1).
- b. Memorandum, NGB-TN, 3 Dec 2004, subject: Butterbaugh Case Update (Encl 2).
- c. OPM Memorandum, 13 Oct 2004, subject as above (Encl 3).

2. This memorandum serves as agency notification of the Butterbaugh vs. Dept of Justice case decision. In this case, the court ruled that agencies should not have charged military leave for non-workdays that occurred within a period of military duty prior to the change in the military leave law that became effective on 21 December 2000. On that date, the law was amended to allow technicians to take military leave on an hourly basis and were no longer required to take leave for non-workdays.

3. The Office of Personnel Management (OPM) issued a memorandum (reference 1c) to provide general guidance on the procedures for processing administrative claims for crediting annual leave as a replacement for military leave that was charged on non-workdays.

a. Technicians will be credited with one day of annual leave for each non-workday occurring within the period of active duty for which he/she was charged military leave. A maximum of four days (32 hours) of annual leave may be credited for each fiscal year.

b. Technicians who retired or separated may file a claim to receive a lump-sum payment for any annual leave recredited as a result of that claim, paid at the rate of pay the technician was earning at the time of his/her retirement or separation.

c. OPM is stating that the claims will be subject to the Barring Act of 1940, which basically places a 6-year time limit on the claim period. This is still being challenged in the courts. DOD attorneys are reviewing the statute of limitations and conditions of settlement to resolve the issues. We suggest that technicians review their records six years back from the date of the Butterbaugh decision (24 July 2003) and file claims occurring during the period 24 July 1997 to 21 October 2000 (date of the change in the military leave law). **Please don't delay in filing a claim if you feel you are entitled to restoration of leave because of Butterbaugh vs. Department of Justice. If OPM's decision to have claims subject to the Barring Act of 1940 is not overturned, the claim period will begin six years**

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prior to the date the employee/former employee submits a claim (i.e., claims filed in 2005 will go back to only 1999).

4. The DFAS payroll centers have begun accepting claims. All claims received by the DFAS payroll centers will be held and processed once final resolution of the Butterbaugh case is reached. Technicians and former employees who believe they are eligible for restoration of annual leave under Butterbaugh vs. Dept of Justice must submit a written request for credit of annual leave and attach supporting documentation that proves he/she was improperly charged military leave for non-workdays occurring during the active duty period. **The DFAS claim form can be found at Encl 4.**

a. In your request specify each non-workday that you were charged military leave. Also, if as a result of being charged military leave on a non-workday, if you had to use annual leave, compensatory time, or leave without pay to fulfill the reserve duty.

b. Attach a copy of the military orders for the active duty period(s); copy of certificate of attendance or similar documentation; and copy or statement of work schedule you were on at the time of leave taken (i.e., Mon to Fri; Tues to Sat, etc.).

c. Other documents that could aid in supporting your claim would include a copy of civilian leave and earnings statement (LES) reflecting pay period in which military leave was used and/or copy of time and attendance documents (i.e., OPM Form 71s, timesheets, etc.).

The burden of proof is on the technician to come up with the supporting documentation. All claims must be mailed to DFAS-Pensacola at the address below. ***It's very important that you indicate which payroll center that services you in the address.*** Army Guard technicians are serviced by DFAS-Denver and Air Guard technicians are serviced by DFAS-Pensacola.

Air Guard

DFAS-Pensacola
ATTN: Butterbaugh vs. DOJ Claims
P. O. Box 33717
Pensacola, FL 32508-3717

Army Guard

DFAS-Denver
ATTN: Butterbaugh vs. DOJ Claims
P. O. Box 33717
Pensacola, FL 32508-3717

5. Ms. Christina Murray, who works for DFAS, has made herself available to assist current and former employees having problems getting the required supporting documentation to file a claim. All you need to do is complete the request for source documents at Encl 5 and email it to her at: Christina.murray@dfas.mil. Ms. Murray will forward the request to the appropriate DFAS payroll center and they will forward the documents to you. We do not know how long DFAS will take to respond to your request.

6. Upon receipt of the completed claims package, the servicing payroll center will audit the leave records against the active duty orders and other documentation provided.

a. Any erroneous charges to annual leave, compensatory time, or leave without pay will be adjusted and an amount of *restored* annual leave will be credited, if applicable, to the technician's leave account. Restored annual leave under this claim must be used by the technician by the end of the leave

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year beginning within two years after the date of restoration or the leave will be forfeited in accordance with 5 USC 6304(d)(1)(a) and 5 CFR 630.306.

b. If you are a separated employee, the payroll center will send you a lump-sum payment to settle the erroneous charges. You must ensure that you provide a current mailing address in your claims packet.

c. If the audit conducted by DFAS finds that intervening weekends or non-workdays did not result in charges to annual, compensatory, or leave without pay, the claimants (current and former technician) will have no entitlement to restored leave or payment and the claim will be sent back to the claimant stating that there was no harm found for the period(s) of the claim.

7. An alternative to filing a claim under the Barring Act of 1940, is to file the claim under the Uniformed Services Employment and Reemployment Act of 1994 (USERRA), as amended [found at sections 4301-4333 of Title 38, USC]. It is currently unclear how far back in time a USERRA claim may reach. This question is in litigation in cases pending before the Merit Systems Protection Board (MSPB). Information about filing claims under USERRA is available on the internet in the "E-Laws" section of the Department of Labor's web site: www.dol.gov. An interactive system, "The USERRA Advisor," answers many of the most frequently asked questions about USERRA.

8. We will continue to keep you informed of any additional guidance and information we receive on this issue.


FOR THE ADJUTANT GENERAL:

5 Ends

1. Memo, NGB-J1-TN, 11 Mar 2005
2. Memo, NGB-TN, 3 Dec 2004
3. OPM Memo, 13 Oct 2004
4. DFAS Claim Form
5. Request Form for Source Documents

CF:

USPFO/Payroll
154 WG/FM



KEITH H. TANOUYE
LTC, AG, HIARNG
Human Resources Officer



DEPARTMENTS OF THE ARMY AND THE AIR FORCE
NATIONAL GUARD BUREAU
1411 JEFFERSON DAVIS HIGHWAY
ARLINGTON, VA 22202-3231

NGB-J1-TN

11 March 2005

MEMORANDUM FOR HUMAN RESOURCE OFFICERS OF ALL STATES, PUERTO RICO, U.S. VIRGIN ISLAND AND THE DISTRICT OF COLUMBIA

SUBJECT: Administrative Claims for Annual Leave as a Result of the Decision in Butterbaugh vs. Department of Justice (TN 05-17)

1. The purpose of this memorandum is to provide clarification and processing instructions concerning the case of Butterbaugh vs. Department of Justice.
2. Although there are still on-going discussions concerning this case, we have been informed DFAS is now accepting all claims. All claims received by DFAS will be held and processed to the appropriate payroll offices **once** a final resolution of the Butterbaugh case is reached. Based on this latest information, please forward all claims you receive to DFAS at the following address:

DFAS (Indicate your servicing DFAS, (i.e., Pensacola/Denver))
P. O. Box 33717
Pensacola, FL 32508-3717
Attn: (Butterbaugh vs. DOJ Claims)

Pensacola DFAS will consolidate all claims and forward to the appropriate servicing DFAS office.

3. Documentation Required: As in all leave claims, the burden of proof is on the employee. The employee must submit a written request for credit of annual leave and must provide supporting documentation that proves he/she was engaged in active military duty that included non-workdays during the claim period (see paragraph 4). Appropriate documentation should include a copy of the employee's military orders, certificate of attendance, or other similar documentation. The claim package should also indicate if the employee was on a work schedule other than Monday through Friday. Upon receipt of the request, the HRO will verify the proper and necessary documentation and process the claim to DFAS.
4. Claim Period: In accordance with the Barring Act of 1940, leave claims against the Government must be filed within six years from which the claim arises. Therefore, the claim period will begin six years prior to the date the employee submits the claim and end on 21 December 2000 (the date the military leave law was changed to allow for

Encl 1

hourly charging of military leave). For example: if the employee submitted a claim on 10 November 2004, the claim period is 10 November 1998 to 21 December 2000.

5. Current, retired or separated employees may submit a claim. Any annual leave credited as a result of an employee's claim must be placed in a restored leave account in accordance with 5 U.S.C. 6304(d)(1)(a) and OPM's regulations at 5 CFR 630.306. The employee must use the restored leave by the end of the leave year in progress, 2 years after the date of restoration. For example, employees who receive annual leave credit in leave year 2005, the time limit for using the re-credited leave will be the end of leave year 2007. Employees who have retired or separated may file a claim with their former agency and must receive a lump-sum payment for any annual leave re-credited as a result of that claim, paid at the rate of pay the employee was earning at the time of his or her retirement or separation.

6. Employees will be credited for 1 day of annual leave for each non-workday occurring within a period of active duty for which he or she was charged military leave. A maximum of 4 days (32 hours) of annual leave may be credited for each fiscal year.

7. We will continue to inform you of any additional guidance from DFAS. Point of contact for this issue is Mr. John Christie at DSN 327-1458 or Ms. Brenda DeCruise at DSN 327-1478.



JIMMY L. DAVIS, JR.
Colonel, USAF

Chief, Office of Technician

Personnel

TN

3 December 2004

MEMORANDUM FOR Human Resource Officers in all States, Territories and District of Columbia

SUBJECT: Butterbaugh Case Update

1. The following information is provided in an effort to keep you informed on the recent Butterbaugh v. DOJ decision (Administrative Claims for Annual Leave).
2. As you are aware, OPM's memorandum of 13 October 2004, regarding the court decision in Butterbaugh v. Department of Justice provided broad guidance to all Federal agencies on processing employees' administrative claims for annual leave. Upon receipt of these instructions, the Office of Technician Personnel took immediate action to obtain DoD's implementing guidance. We have been in daily contact with DoD to obtain guidance progress reports. We have been advised on numerous occasions that guidance is being finalized and will be released upon completion.
3. On 30 November 2004, we were informed the implementing guidance is on-hold pending further review by DoD attorneys. One issue of concern DoD has is the statute of limitations and another is whether the conditions of the settlement are appropriate. Such questions as these have led to additional questions, and no guidance will be issued until these issues are resolved.
4. We realize as a result of OPM's memorandum you have been inundated with inquiries, and we understand your need for immediate guidance. Upon receipt of DoD's guidance, we will inform you promptly. We appreciate your patience and ask in the interim you accept all voluntary claims and hold them in abeyance until the release of further guidance.
5. This memorandum is also being forwarded to the five major labor unions we partner with in the National Capitol Region.

//signed//

JIMMY L. DAVIS, JR.
Colonel, USAF
Chief, Office of Technician Personnel

Encl 2

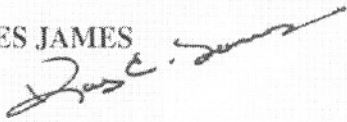


OFFICE OF THE DIRECTOR

UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, D.C. 20415

OCT 13 2004

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: KAY COLES JAMES
Director 

SUBJECT: Administrative Claims for Annual Leave as a Result of
Decision in *Butterbaugh v. Department of Justice*

This memorandum provides guidance to assist agencies in processing employees' administrative claims for annual leave as a result of the decision in *Butterbaugh v. Department of Justice*, 336 F.3d 1332 (Fed. Cir. 2003)). In a July 24, 2003, decision, the U.S. Court of Appeals for the Federal Circuit ruled that, pursuant to 5 U.S.C. 6323, employees were required to take military leave only on days on which they were required to work and that agencies should have allowed 15 workdays of military leave for reserve training (instead of 15 calendar days, as the language in this section was previously interpreted and applied prior to the court's ruling). Therefore, the court ruled that agencies should not have charged military leave for nonworkdays that occurred within the period of military duty prior to the change in the military leave law that became effective on December 21, 2000. On this date, 5 U.S.C. 6323(a) was amended to include a new paragraph (3), which for the first time allowed employees to take military leave on an hourly basis. Following enactment of this amendment, employees were no longer required to take leave for nonworkdays.

The plaintiffs in *Butterbaugh* maintained that, because they were charged military leave for nonworkdays within their period of military duty, they exceeded their allowance of 15 days of military leave each fiscal year and were forced to take leave without pay and/or annual leave to complete their annual reserve training. In response to the *Butterbaugh* decision and in anticipation of the additional claims that will result, we are issuing this guidance on the procedures for processing employees' administrative claims for crediting annual leave as a replacement for military leave that was charged on nonworkdays. Agencies should inform employees of the holding under the *Butterbaugh* decision in order to give notice to potential claimants. You may use this memorandum to notify employees of this decision.

Under the Barring Act of 1940 (codified at 31 U.S.C. 3702), a leave claim against the Government must be received by the agency that conducts the activity from which the claim arises within 6 years after the claim accrues. Therefore, agencies may accept claims filed after July 24, 2003 (the date the *Butterbaugh* decision was issued), for crediting additional leave for military leave charged on nonworkdays between the date 6 years prior to the claim filing date (the beginning of the 6-year claims period) and December 21, 2000 (the date of the

Encl 3

change in the military leave law). For example, if an employee filed a claim on August 1, 2004 (after the court's decision and prior to the issuance of this guidance), the agency must consider any period of military service between August 1, 1998, and December 21, 2000. If an employee files a claim on January 15, 2005, the agency will consider any period of military service between January 15, 1999, and December 21, 2000, in crediting annual leave.

As in all leave claims, the burden of proof is on the employee. An employee making a claim must supply a copy to his or her employing agency of the employee's orders, certification of attendance, or other documentation indicating that he or she engaged in one or more periods of active military duty that included nonworkdays during the applicable claims period described in the preceding paragraph. Employees will be credited for 1 day of annual leave for each nonworkday occurring within a period of active duty for which he or she was charged military leave. A maximum of 4 days of annual leave may be credited for each fiscal year.

Any annual leave credited as a result of an employee's claim must be placed in a restored leave account in accordance with 5 U.S.C. 6304(d)(1)(a) and OPM's regulations at 5 CFR 630.306, and the restored leave must be used by the employee by the end of the leave year in progress 2 years after the date of restoration. (For employees who receive annual leave credit in leave year 2004, the time limit for using the recredited leave will be the end of leave year 2006, which is January 6, 2007.) Employees who have retired or separated may file a claim with their former agency and must receive a lump-sum payment for any annual leave recredited as a result of that claim, paid at the rate of pay the employee was earning at the time of his or her separation or retirement.

Employees should contact their agency human resources offices for information on procedures for filing a claim. For additional information on crediting annual leave to members of the Reserves or National Guard, agency Chief Human Capital Officers and/or Human Resources Directors may contact their assigned OPM Human Capital Officer.

cc: Chief Human Capital Officers
Human Resources Directors

CLAIM FORMAT

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

NAME _____ **SSN** _____ **DATE** _____

CURRENT MAILING ADDRESS (former employees only) _____

SERVICING PAYROLL OFFICE AND MAILING ADDRESS _____

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

DFAS PAYROLL OFFICE (Specify Charleston, Pensacola, or Denver) _____

MAIL TO: PO Box 33717, Pensacola FL, 32508-3717 (See attachment 1 for translation of the Payroll Office Identification (ID) Number (POIN) shown on your Leave and Earnings Statement to your servicing payroll office)

REQUIRED INFORMATION FOR EACH PERIOD OF ACTIVE DUTY ORDERS:

ACTIVE DUTY DATES FROM: _____ TO: _____

ACTIVE DUTY DATES FROM: _____ TO: _____

ACTIVE DUTY DATES FROM: _____ TO: _____

REQUIRED SUPPORTING DOCUMENTATION (ATTACH TO CLAIM) – Claimant's 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 my order to military active duty for a continuous period of active duty that includes a weekend or nonworkday.
- A copy of my certificate of attendance for each period of active duty listed above.
- A copy of my applicable civilian work schedule (if it was not a standard Monday through Friday) for the period(s) of active duty listed above, showing nonworkdays.

ADDITIONAL INFORMATION (OPTIONAL)

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

I understand and accept that filing this administrative claim means the following: All administrative claims against the Government must be received by the agency within 6 years after the claim accrues, under 31 U.S.C. §3702. Only leave amounts that accrued within the 6 years preceding the filing of the claim with the Government may be restored or paid for under these procedures. Restoration of leave or alternatively payment of an 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 nonworkdays.

I further understand and accept that 1 day of restored annual leave will be given for each weekend day, nonworkday, or leave without pay (LWOP) charged during my continuous period of active duty. If the audit indicates no charges to annual leave or LWOP were made, then there is no entitlement to payment or restored annual leave. Current employee will receive restored annual leave for any erroneous changes of leave or LWOP; former employees will receive payment for erroneous changes of leave or LWOP. 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 _____ **DATE SIGNED** _____

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
97300800	Denver Payroll Office
97380100	Pensacola Payroll Office
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