

Date: February 2, 2006

Claimant: [name]

File Number: 04-0036

OPM Contact: Robert D. Hendler

The claimant retired from a [GS-13] position with the U.S. Secret Service, U.S. Department of the Treasury, on July 31, 1990. He requests that the U.S. Office of Personnel Management (OPM) direct his former agency to allow him to buy back leave subsequent to his retirement due to a service-related injury. We received the original request on June 24, 2004, and from a representative who was officially designated as such on July 5, 2004. We accepted the claim on September 14, 2004, but did not receive the agency administrative report until November 16, 2004. We received additional information from the agency on November 15, 2005, and information from the claimant's representative on December 7, 2005. For the reasons discussed herein, the claim is denied.

In a June 7, 2004, signed statement, the claimant said that he received a disabling injury in the line of duty on April 8, 1986, at which time he filed for benefits with the Office of Workers' Compensation Programs (OWCP), U.S. Department of Labor (DOL). At the time of his injury, he had accumulated "over 1,000 hours of sick leave and over 200 hours of annual leave. He stated that he was:

wrongly advised by my supervisor that I must exhaust all of my sick leave first and then all of my annual leave and be placed in a leave without pay status...before my worker's compensation payments began....At the time compensation payments began 5/10/87, had I not been required by my supervisor to exhaust all of my leave, I would have accumulated a total of 1550 hours of leave according to my records (1216 hour [sic] sick leave and 334 hours of annual leave)

The claimant described his attempts to correct his rate of OWCP compensation and provided a copy of a September 11, 1990, memorandum from the Chief, Personnel Division, U.S. Secret Service, stating that his request to buy back leave had been processed and approved. The memorandum states that the agency had "submitted the required certification to" OWCP and provided calculations showing the amount that the claimant should submit to that office. The memorandum further stated that "Upon receipt of your check and the check from OWCP, the

time previously charged to annual and/or sick leave will be changed to Leave Without Pay and your leave record will be changed to reflect the recredit of the leave you have bought back.” The agency showed a total of 1508 hours of leave on the form. The claimant stated that he spoke to Personnel Division staff “on numerous occasions between 1987 and 2001” seeking to determine why the agency had the discrepancy of 42 hours of leave and the proper pay rate (GS-13/7 vice GS-13/8).

The claimant said that “I refused [the agency offer to buy back leave] and asked that the offer be revised to reflect the correct pay grade and correct number of leave hours. This was never done.” The claimant submitted a letter from his agency dated August 27, 2002, to his congressional representative concerning his request for a “review of records involving compensation paid to him as a result of his work-related injury” stating that the claimant:

should submit specific written documentation of any and all the time he is disputing...Once this information is received, we will mail [claimant] the appropriate DOL Forms that he will need to complete and return. In the meantime, our Personnel Division has requested the official Leave and Earning Statements from both our Atlanta Field Office and payroll division. Once all of this information has been received from these sources, a determination will be made as to whether a recalculation is necessary and, if so, submit it to the Department of Labor for their adjudication.

The claimant cited a DOL letter dated June 22, 2002, and said that DOL “is willing to reprocess my leave buy back request at the proper grade, if the Secret Service will resubmit the required documents to the OWCP.” He stated that:

Since the US Secret Service created the errors described above, it is their responsibility to correct their errors and permit me to repurchase my leave...There was no inaction on my part, any delay was due to the fact that the DOL kept me seeing doctors, undergoing tests, and completing paperwork from 1987 until 2003...I feel that since I have been required to seek legal advice on this matter, I should be entitled to some sort of interest and reasonable attorney fees, from the US Secret Service and or the Department of Labor (DOL).

The agency administrative report stated that

[Claimant] retired from the Secret Service on July 31, 1990. On September 11, 1990, [claimant] was informed by the Personnel Division that the request for buy back leave had been approved and processed. The next steps to buy back leave would have been for [claimant] to reimburse the Secret Service 25% of the cost of the purchase of the leave. However, [claimant] did not provide the requested payback amount and did not contact the Secret Service for more than ten years later when the agency received a letter from Congressman Linder on his behalf.

The report also stated that:

A request to repurchase leave that has been used for worker's compensation injuries is subject to the policy of the employing agency's leave buy back process. It is the general practice of the Secret Service not to restore annual or sick leave to employees who are no longer on the agency's rolls. Leave buy back is considered a process to restore leave to employees who will return to work. If the employee does not return to work, there is no purpose in continuing the leave buy back process. However, if the employee has begun the leave buy back process before their retirement, the Secret Service as a matter of policy allows the former employee to complete the leave buy back process. Consequently, since [claimant] had already started his leave buy back application prior to his mandatory retirement, the agency was willing to honor his application immediately after he retired if it was purchased in a timely manner. However, [claimant] waited for more than ten years before addressing the issue of leave buy back and his failure to repay the amount to reimburse his leave was interpreted by the agency as a declination of the offer to process the leave buy back. In addition, the Secret Service no longer has the appropriate time and attendance records for the period in question thus, it is nearly impossible to verify [claimant's] leave use and it is extremely difficult administratively to correct the records. The statute of limitations for claims also dates back six years. Therefore, the Secret Service believes that [claimant's] claim should be denied.

The agency administrative report replicates, in large part, the reasoning in its claim denial letter of April 13, 2004, responding to a letter dated January 31, 2004. The claimant stated in his response to the agency administrative report submitted through his representative and dated February 10, 2005, that his "claim was timely filed and approved. It was never acted upon although I made numerous phone calls to the Secret Service Personnel Division" and reiterated much of the same reasoning given in his initial claim request.

The Barring Act, 31 U.S.C. § 3702(b)(1), states that every claim against the United States is time-barred unless such claim is received within six years after the date such claim first accrued. The claimant would ask us to find that his claim was filed timely by his request to buy back his leave which was approved by the agency on September 11, 1990. The claimant admits that his request was granted. The gravamen of his request to OPM is that his claim was preserved by that action and that the agency is obligated to process his request to buy back leave from that date forward.

The claimant would ask us to ignore the clear and unambiguous meaning of 5 U.S.C. § 3702(a)(2) and (b)(1) that a claim against the Government is for compensation or leave denied. The claimant admitted that his refusal to act on the September, 11, 1990, leave buy back approval letter was because he disagreed with the agency's calculation of the hours of leave at issue. He stated that "On numerous occasions between 1987 and 2001" he spoke with employees in his former agency's Personnel Division concerning his disagreement with the number of leave hours and rate of pay at issue in his OWCP claim. To preserve a claim,

5 U.S.C. § 3702(b)(1) requires that “A claim against the Government...must contain the signature and address of the claimant,” and must be received by the official responsible to settle the claim “within six years after the claim accrues.” The claimant admitted that he did not do so: “There was no inaction on my part, any delay was due to the fact that the DOL kept me seeing doctors, undergoing tests, and completing paperwork from 1987 until 2003.”

Indeed, the record shows that he wrote to others to assist in resolving this matter. The record includes a letter dated July 17, 2002, from the claimant’s congressional representative to the U.S. Secret Service which states that the claimant “would like an explanation of the computation method” used to arrive at the number of hours of leave at issue so that the representative “could address my constituent’s concerns.” However, the claimant failed to file a written claim disagreeing with the agency’s calculations until January 31, 2004, which led to the agency’s claim denial dated April 13, 2004.

The six-year limitation begins running from the date a claim first accrues. Accordingly, any claim for the leave buy back at question in this case first accrued no later than September 11, 1990, the date the leave buy back was approved, and expired no later than six years thereafter on September 11, 1996. The claimant originally filed a claim with OPM on June 24, 2004. Since on September 11, 1996, the claim expired due to the running of the statutory six-year limitation period, the claim is barred from our consideration and may not be allowed. *B-221252, Matter of John E. Denton, September 19, 1986, Matter of Robert O. Schultz, B-261461* (November 27, 1995). The Barring Act does not merely establish administrative guidelines; it specifically prescribes the time within which a claim must be received in order for it to be considered on its merits. *Matter of Nguyen Thi Hao, B-253096*, (August 11, 1995). OPM does not have any authority to disregard the provisions of the Barring Act, make exceptions to its provisions, or waive the time limitation that it imposes. See *Matter of Nguyen Thi Hao, supra; Matter of Jackie A. Murphy*, B-251301 (April 23, 1993); *Matter of Alfred L. Lillie, B-209955*, May 31, 1983, OPM File Number 01-0017, February 2001. Thus, the law precludes us from considering this claim.

The agency decision appears to deny the claim for two reasons; that it is time-barred and that the claimant’s “failure to repay the amount to reimburse his leave was interpreted by this agency as a declination of the offer to process the leave buy back request.” Although we are not required to do so, we will respond to the substantive underlying issue of this claim request. The Civilian Personnel Law Manual, Title II states:

An employee who uses annual or sick leave to recuperate from a work-related injury may “buy-back” such leave pursuant to 20 CFR 10.310, be placed on leave without pay, and accept compensation for the injury under the Federal Employees’ Compensation Act, 5 U.S.C. 8101 - 8151. [Emphasis added.]

Section 10.425 of title 20, Code of Federal Regulations, further states that, “[t]he employee may claim compensation for periods of annual and sick leave which are restorable in accordance with the rules of the employing agency.” Assuming, arguendo, that the claim was not time-barred, we find the agency’s application of its leave buy back policy to disallow leave buy back for the claimant due to his failure to take action is reasonable given the facts of this case. Where the agency’s factual determination is reasonable, we will not substitute our judgment for that of the

agency. See, e.g., *Jimmie D. Brewer*, B-205452, March 15, 1982, OPM File Number 01-0037, October 23, 2001.

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.