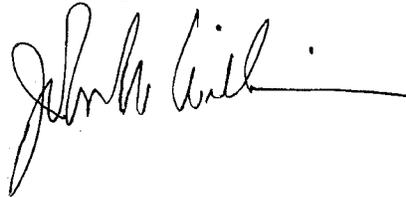


For: FFAS Employees

**Administrative Claims for Leave as a Result of the Decision in  
*Butterbaugh v. Department of Justice*, 336F.3d 1332 (Fed. Cir. 2003)**

Approved by: Deputy Administrator, Management



**1 Overview**

**A Background**

The *Butterbaugh v. Department of Justice* case was brought under the Uniformed Services Employment and Restoration Rights Act of 1994 (USERRA), as amended. In *Butterbaugh v. Department of Justice*, the United States Court of Appeals for the Federal Circuit reversed OPM’s interpretation of 5 U.S.C. Section 6323, and held that, at least since 5 U.S.C. Section 6323(a) was amended on October 1, 1980, it has been clear that employees are required to take military leave only for those days in which they would have normally worked in their civilian jobs. Accordingly, agencies should have been granting reservists with 15 workdays of military leave for reserve training each year, rather than 15 calendar days.

After 2 subsequent *Butterbaugh*-related decisions by the Merit System Protection Board (MSPB), MSPB held that there is no statute of limitations on claims brought under USERRA procedures, including claims that allege violations of the Vietnam Era Readjustment Act of 1974, USERRA’s predecessor statute. OPM does not plan further appeals of these decisions and has recommended that individual Departments issue their own departmental policies on this subject. Accordingly, USDA will process administrative claims covering military leave granted dating back to October 1, 1980.

**B Purpose**

This notice establishes policy within FFAS to process claims for restored leave as a result of the *Butterbaugh v. Department of Justice* decision.

<p><b>Disposal Date</b></p> <p>October 1, 2008</p>	<p><b>Distribution</b></p> <p>All FAS, RMA, and FSA employees; State Offices relay to County Offices.</p>
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## 2 Filing a Claim

### A Eligible Employees

Current and former employees who were simultaneously employed by FFAS and served in the Reserves for the military, including Military Technicians and members of the National Guard; and were improperly charged military leave for nonworkdays that occurred within the period of military duty are eligible to file a claim for restored leave.

### B Employee Action

Eligible applicants may file a claim for restored leave directly with the USDA agency that charged the leave. Employees shall submit their claims in writing to their Service Personnel Office (SPO). Each claim must cite the specific dates that the employee was charged military leave for nonworkdays. Claims may be filed to cover periods of military leave dating back to October 1, 1980.

### C Documentation Requirements

The burden of proof for the claim is on the employee. An employee making a claim must submit a copy of their military orders and either of the following:

- certification of attendance
- other documentation verifying that employee engaged in 1 or more periods of active military duty that included nonworkdays.

### D SPO Action

SPO's must:

- review claim submitted by employee or former employee
- verify simultaneous employment and reserve service
- determine appropriate number of hours to be restored
- process leave restoration
- notify employee of time limit for use of restored leave.

## 3 Restoring Leave

### A Determining Number of Hours for Restoration

SPO shall determine the amount of leave that the employee is eligible to have restored. Military leave that the employee is eligible for will be processed as restored annual leave. One day of military leave is equal to 8 hours of restored annual leave. In most cases, a maximum of 4 days of military leave per year were charged for a reservist who served on Saturdays and Sundays which were nonworkdays. Therefore, 4 days or 32 hours would be restored for that particular year. A **maximum** of 4 days of annual leave may be credited for each FY.

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### 3 Restoring Leave (Continued)

#### A Determining Number of Hours for Restoration (Continued)

SPO shall:

- use “Administrative Error” when processing the annual leave restoration into the payroll system
- enter restored leave into NFC’s database
- notify the employee and the employee’s timekeeper of the restoration, including the time limit for using the restored leave.

#### B Using Restored Annual Leave

Restored annual leave must be used no later than the end of the leave year 2 years after it has been restored, (that is, leave restored during 2007 must be used by the end of the 2009 leave year). If restored annual leave is not used within this timeframe, it is forfeited and cannot be restored a second time.

Restored annual leave is a separate leave category from regular annual leave and should be used by the employee before regular annual leave. Timekeepers shall use T&A transaction code “63” when recording the use of restored annual leave.

**Note:** Employees who separate before the end of leave year 2 after restoration are eligible for a lump-sum payment of the restored leave.

#### C Former Employees

Claims from retired or separated employees must be processed as a lump-sum payment to the former employee. The lump-sum payment shall be paid at the rate of pay that the employee was earning at the time of their separation or retirement from FFAS.

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**3 Restoring Leave (Continued)**

**D Contacts**

Employees shall contact their SPO according to the following.

<b>IF located in...</b>	<b>THEN contact...</b>
<ul style="list-style-type: none"><li>• FSA/FAS/RMA National Office</li><li>• RMA Regional and Compliance Offices, except KC</li><li>• FAS Overseas</li></ul>	HRD, Employee Programs Branch at either of the following: <ul style="list-style-type: none"><li>• 202-401-0066</li><li>• 202-401-0688.</li></ul>
<ul style="list-style-type: none"><li>• ITSD-ADC</li><li>• ITSD-OTC</li><li>• KCHRO</li><li>• FSC</li><li>• APSS</li><li>• KCCO</li><li>• MSD, Kansas City Administrative Services Branch</li><li>• RMA, R&amp;D, and KC Compliance Office</li><li>• APFO</li></ul>	KCHRO at either of the following: <ul style="list-style-type: none"><li>• 816-926-6117</li><li>• 816-926-6259</li><li>• 816-926-6184.</li></ul>
FSA State or County Office	State Office Administrative Officer.