



STATE OF GEORGIA
DEPARTMENT OF DEFENSE

DAVID B. POYTHRESS
MAJOR GENERAL, GA ANG
THE ADJUTANT GENERAL

HRO

18 March 2005

MEMORANDUM FOR All Georgia Department of Defense Selecting Officials and Current and Former Technicians of the Georgia Army & Air National Guard

SUBJECT: National Guard Technician Employee's Administrative Claim for Annual Leave Restoration Resulting from the Federal Circuit Court Decision in *Butterbaugh v. Department of Justice*.

1. In accordance with OPM Memorandum CPM 2004-19 and NGB Memorandum TN-05-17, the following information and application procedures are provided as background information for your review, consideration, and annual leave restoration claim submission (if applicable) to the Defense Finance and Accounting Service (DFAS) through the Georgia National Guard Human Resources Office, Employee Relations Section (GA HRO/ERS):

- a. *In **Butterbaugh v. DOJ**, 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 a 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.*
- b. ***Under the Barring Act of 1940 (codified at 31 U.S.C. 3702), a leave claim against the Government must be received within 6 years after the claim accrues and is filed.** Therefore, the Georgia National Guard may accept claims for crediting additional annual leave for military leave charged on nonworkdays between the date 6 years prior to the claim filing date and December 21, 2000 (the date of the change in the military leave law). **Example One:** If an employee filed a claim on April 1, 2005, the agency must consider any period of military service between April 1, 1999, and December 21, 2000. **Example Two:** If an employee files a claim on May 15, 2005, the agency will consider any period of military service between May 15, 1999, and December 21, 2000, in crediting annual leave. See Paragraph 1(e) for date eligibility information.*
- c. *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 employees with this proof. **An employee making a claim must submit their claim in writing to HRO/ERS using the attached claim form and also attach a copy of the employee's certified military orders and/or military leave and earnings statement (Military LES), and certification of military leave use, i.e. civilian leave and earnings statement (Civilian LES) 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 (32 hours) of annual leave may be credited for each fiscal year.***

- d. **Current, retired or separated employees may submit a claim.** For Current Employees – 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 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 will only 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.
- e. **Note:** We have been instructed to start accepting claims and forward them to DFAS. Since there are on-going discussions and legal actions concerning *Butterbaugh v. DOJ*, the GA HRO will accept claims for forwarding to DFAS encompassing the time-period six years prior to July 24, 2003 (the effective date of the *Butterbaugh* decision). **Therefore you may submit claims for annual leave restoration for military leave used on non-workdays for the period July 24, 1997** (six year prior to the *Butterbaugh* decision) **to December 21, 2000** (the date of the change in military leave law). However, due to on-going discussions and litigation over *Butterbaugh v. DOJ* as a result of the Barring Act restrictions, **DFAS will hold and not process these claims until a final resolution is reached and correct claim effective dates are established.** In other words, the final ruling may specify that the Barring Act applies and you may not be able to claim annual leave reimbursement in excess of six years from the date the claim is filed with DFAS.

2. Georgia Army and Air National Guard current and former technicians (including mobilized individuals) who qualify should use the enclosed application to process annual leave (for military leave used during nonworkdays) restoration claims. Fill out the enclosed application and attach documented proof in accordance with paragraph 1(c) above. Sign and date the completed application and mail or FAX to:

**Georgia National Guard HRO
Building #21, Attn: ERS/Ms. Lowe
935 East Confederate Avenue, S.E.
Atlanta, GA 30316-0965**

FAX: Comm: (678)569-6446 / DSN: 338-6446

3. This memorandum is posted on the GA HRO website at: <http://www.gahro.com> and Selecting Officials are encouraged to promote several postings of this memo on unit websites and newsletters to help capture retirees that may be entitled to compensation. The point of contact for leave restoration claims covered by this memorandum is Ms. Judie Lowe, HRO Employee Relations Specialist (HRO/ERS) at Commercial: (678) 569-6419; DSN: 338-6419; FAX: x6446; E-mail: judie.lowe@ga.ngb.army.mil or SSgt Kelly Casey at x6431. For more information, you may also contact Lt Col Jay Peno at DSN: 338-6440.



EDWARD I. WEXLER
Colonel, GA ANG
Human Resources Officer

Encl:
Leave Restoration Claim Application

Distribution:
All GA DoD Selecting Officials
All GA DoD Technicians
Via Web and Mailing Lists to All GA DoD Retirees

GA ARNG/ANG Claim for Leave Restoration, RE: Butterbaugh v. DOJ Decision

To: Georgia National Guard HRO
 Building #21, Attn: ERS-Ms. Lowe
 935 East Confederate Ave, S.E.
 Atlanta, GA 30316-0965

From: *(Please print or type clearly all required information, sign/date the application and attach documentation)*

Name (First, MI. Last): _____ **SSN:** _____

Branch/Status Info: **Branch:** ARNG ANG **Status (check one):** Current Tech: Retired: Separated:
 (Check One)

Address/City/St/Zip: _____

Phone (Hm/Wk/Cell): _____

E-Mail Address: _____

Subject: Annual Leave Restoration Claim, Re: Butterbaugh v. DOJ Decision

This is a claim for annual leave restoration based on the decision rendered in Butterbaugh v. DOJ. This claim complies with the guidance issued by the Georgia National Guard Human Resources office which implemented the instructions contained in the OPM letter CPM 2004-19, Subject: Administrative Claims for Annual Leave as a Result of Decision in Butterbaugh v. Department of Justice, dated October 13, 2004, and the NGB-J1-TN Memorandum, TN 05-17, Subject: Administrative Claims for Annual Leave as a Result of Decision in Butterbaugh v. Department of Justice, dated 11 March 2005.

My claim is for the following dates, during which I was charged Military Leave during non-workdays:

Period of Military Duty: [Format yymmdd – yymmdd i.e.- 990326 – 990412]	Dates of Non-workdays for Which Military Leave was Used During the Stated Period: [Format: yymmdd / yymmdd / yymmdd / etc. i.e.- 990328 / 990403 / 990404 / 990410]	# Days Claimed (Maximum 4 Days per Fiscal Year)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

I have attached the required documentation to support my claim:

- 1. Copy of certified military orders or military LES for the period/s indicated above.**
- 2. Copy of civilian LES for the period/s of military duty indicating military leave used.**

By signing and submitting this claim I declare, under penalty of perjury, that this is a truthful and accurate representation of my claim and that the attached document/s is/are exact, correct and complete copy/s of the original document/s in my possession.

Sincerely,

Signature: _____ Date: _____

This Section for HRO Use Only:	Date Received In HRO:		HRO Review By (Initials):		Date Forwarded to DFAS:	
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