

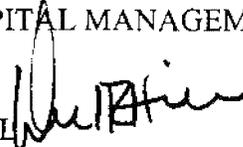


## Department of Energy

Washington, DC 20585

July 30, 2007

MEMORANDUM FOR: JEFF T. H. PON  
CHIEF HUMAN CAPITAL MANAGEMENT OFFICER

FROM: DAVID R. HILL  
GENERAL COUNSEL 

SUBJECT: Administrative Claims for Leave under USERRA  
(Uniformed Services Employment and Re-employment  
Rights Act of 1994)

Your office has requested guidance concerning the impact of three recent decisions on the Department of Energy's (DOE) administration of the military leave requirements of the Uniformed Services Employment and Re-employment Rights Act of 1994 (USERRA) and of the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA). All three decisions involved current and former federal employees who alleged that the agency charged them annual leave or leave without pay for the performance of military reserve duty on non-workdays in violation of USERRA and VEVRAA.

Federal employees are currently allowed 15 days of military leave for reserve training each year. In *Butterbaugh v. Department of Justice*, 336 F. 3d 1332 (Fed. Cir. 2003), the court clarified the definition of "15 days", stating that, since 5 U.S.C. 6323 was amended effective October 1, 1980, it has been clear that federal employees are required to take military leave *only* for those days that they would have been obligated to actually work in civilian jobs. Accordingly, agencies should have been allowing 15 *workdays* of military leave for reserve training each year, instead of 15 *calendar* days, as was the practice set forth by the Office of Personnel Management's (OPM) implementing regulations. As a result of OPM's regulations, many federal employees were erroneously required to take leave without pay or annual leave to complete a reserve duty commitment when in fact they had no obligation to do so and should not have been charged either annual leave or leave without pay. In accordance with the *Butterbaugh* decision, and DOE's long-standing compliance with OPM regulations, some DOE employees may be entitled to a restoration of leave, or a recalculation of military leave, dating back to October 1, 1980.

Additionally, DOE's current policy is to only process administrative claims under USERRA in military leave cases based on violations that have occurred in the previous six years. In *Harper v. Department of Navy*, 2006 MSPB 30, and *Garcia v. Department of State*, 2006 MSPB 29, however, the Merit System Protection Board held that there is *no* statute of limitations for claims brought under USERRA, including claims that allege unique violations of VEVRAA.



Based on our analysis, the Office of the General Counsel has concluded that DOE should process administrative claims in military leave cases brought under USERRA and VEVRAA back to October 1, 1980.

cc: Dave Jonas, NA