

Reservist Leave Ruling Favors Civil Servants

An estimated 100,000 to 300,000 current and former reservists employed as federal government civilians may be able to recoup money for leave days that were improperly charged to them dating back to 1980.

The Federal Circuit Court of Appeals ruled Tuesday that Jose Hernandez, a retired Air Force civilian aircraft mechanic, was entitled to be considered for reimbursement for leave that was charged to him from 1980 to 2001, and sent his case back to the federal Merit Systems Protection Board for reconsideration.

“This is the largest victory for federal employees in the history of the federal civil service system,” said Hernandez’s attorney, Mathew Tully, who practices in Albany, N.Y. Tully, who has represented reservists in thousands of similar cases, said he estimates from 100,000 to 300,000 people could be eligible to receive refunds ranging from \$1,500 to \$3,000.

It could potentially cost the federal government more than \$1 billion, said Tully, who is also a regular columnist for the Military Times newspapers. The reservists or former reservists have to take action, and file individually to get reimbursed. There is no time limit.

“Now we expect the Office of Personnel Management to say [reservists] can submit paperwork back to 1980,” Tully said. Information was not available from OPM officials about whether they plan to put a mechanism in place. In a related decision Wednesday in a separate case, the same court made another move to nudge federal agencies to treat reservists in these cases more favorably.

“We make clear that, while not legally obligated to do so, agencies may resolve claims by providing more compensation than an individual has been able to prove,” the judges stated.

That, the judges stated, “helps to ensure that veterans are appropriately given the benefit of the doubt in the face of such records and fully enjoy the presumption that veterans’ benefits statutes are to be resolved in their favor. “

By law, federal government employees are allowed 15 days of annual military leave for National Guard or reserve training or drill time, without loss in pay, time or performance or efficiency rating. They can also carry over up to 15 days of military leave from one year to the next.

The federal government’s standard practice was to charge reservists’ military leave for every day they were away on reserve duty, even if they weren’t scheduled to work on those days. For example, if the civilian employee’s regular work schedule was Monday through Friday, and he had reserve training from Monday through the Tuesday of the following week, he would be charged leave for the weekend days. Sometimes this forced reservists to take leave without pay, sick leave or annual leave.

But in 2003, the Federal Circuit Court of Appeals ruled that this practice was contrary to a law that Congress passed in 2000 — and that the practice also denied them benefits under the

Uniformed Services Employment and Reemployment Rights Act of 1994. That opened the door for reservists to get reimbursed for military leave days and get their personnel records corrected, back to 1994. Although more than 100,000 reservists may have been affected, Tully said, his firm has represented about 6,000, and an additional 10,000 have been administratively handled by OPM. That number could not be confirmed by OPM at press time.

MAY APPLY TO CASES BEFORE 1980

The Federal Circuit Court of Appeals, in its decision Tuesday, ruled that the federal Merit Systems Protection Board does have the authority to consider cases that pre-date USERRA, and that the department's practice of charging military leave also violated the law before USERRA.

Tully said the reimbursements could eventually apply to leave improperly charged before 1980. "We're litigating a case now that's from 1972 to 1992. We're going to push the envelope," he said.

This decision does not apply to active-duty military members' leave, which is often charged over a weekend. Tully noted that many active-duty members, including some military attorneys, have asked him to research this question. "As a civilian, you're not considered to be on duty 24/7 like you are in the military," he said.

Reservists can also choose to file claims with the help of attorneys such as those in Tully's firm, which has filed thousands of such cases. His firm offers free representation to federal workers who may be affected, earning its compensation through legal fees clients are entitled to if they win.

Tully's firm has gathered military leave records from the Defense Finance and Accounting Service, and matches them up with federal agencies' records from the National Archives. For information, go to <http://www.fedattorney.com>.