

Reserve Returns

If you are an active or retired federal employee who took military leave for reserve activities, you may be entitled to annual leave or thousands of dollars in back pay. In a major decision issued Tuesday, the U.S. Court of Appeals for the Federal Circuit ruled that the Merit Systems Protection Board has the authority to order relief for violations of the 1994 Uniformed Services Employment and Reemployment Rights Act, even for service prior to the law's enactment. This means that federal employee reservists now can seek credit for improperly charged leave dating back to 1980.

The case, *Hernandez v. Department of the Air Force*, involves a claim Jose Hernandez, a retired aircraft mechanic and a former reservist, filed with the Merit Systems Protection Board. Hernandez alleged that he had been erroneously charged military leave from 1980 to 2001, forcing him to use annual and sick leave, along with leave without pay, to perform his reserve duties.

Under current law, federal employee reservists are given 15 days of military leave annually, with the ability to carry any unused leave into the following year. But prior to a 2000 amendment, the government's standard practice was to charge reservists with military leave for every day they were on reserve duty, even if a portion of the leave occurred on days when they were not regularly scheduled to work, such as weekends. So a typical employee who was called to reserve training from Monday to Sunday would be charged with seven days of military leave, rather than five.

In 2003, the federal circuit court ruled in *Butterbaugh v. Department of Justice* that the government's practice of improperly charging military leave violated federal employment law and constituted the denial of a benefit of employment in violation of USERRA.

In Hernandez's case, an MSPB administrative judge denied him access to any leave records prior to 1994, saying the 1994 amendments to USERRA set a cutoff date for such claims. Hernandez appealed that decision to the federal circuit court, which reversed MSPB's ruling.

"Our conclusion is consistent with, and further supported by, Congress' broad remedial intent in enacting USERRA, and the canon that veterans' benefits statutes are liberally construed in favor of the veteran," the court's decision stated.

The decision will allow reservists to seek compensation for improperly charged leave since 1980, rather than 1994, nearly tripling the amount of compensation available, said Mathew Tully, Hernandez's attorney. Tully estimated that as many as 300,000 federal employees could be affected and the average amount of compensation per employee could be more than \$3,000.

"The decision is another victory for military reservists who have repeatedly had to go to the U.S. Court of Appeals for the Federal Circuit to overturn wrong decisions by the [MSPB], which has continually rendered unfavorable decisions against our fighting men and women," Tully said.

According to Tully, current federal employees will be compensated with either military or annual leave, with cash payments only in very rare circumstances. Generally, only retired or former federal employees will be compensated with cash, he said.

If you are a current or former federal employee reservist and believe you have been improperly charged with military leave, Tully said you can file a claim directly with the MSPB or contact his firm -- Tully, Rinckey & Associates -- to process your claim at no cost.