

Reservists Win Ruling on Use of Leave

Federal workers who served in the military reserves between 1994 and 2000 may be eligible for retroactive compensation because of a July 15 ruling by the Merit Systems Protection Board.

A group of employees filed a claim with MSPB, alleging that their agencies illegally charged them military leave for nonworkdays, such as weekends and holidays, when they served in the reserves. That action forced reservists to use annual leave, sick leave and leave without pay to complete their military obligations, they claimed.

MSPB is charged with reviewing significant actions of the Office of Personnel Management.

OPM, prior to the MSPB ruling, administered guidance to federal agencies that stated employees could recover leave only for the past six years, beginning in 1999. An MSPB administrative judge previously upheld OPM's six-year limit. The full board, however, in its ruling, reversed that decision and extended the date to 1994.

Tully, Rinckey & Associates, the law firm representing the reservists, said the latest ruling could allow its clients "to receive as much as four times the amount of compensation allowable under the current OPM guidance."

Compensation would be in the form of extra leave days for most employees. Retirees and workers who used leave without pay to compensate for the extra days may receive cash, according to Greg Rinckey, the reservists' lawyer. Rinckey said his firm represents about 1,000 federal workers in this complaint and estimates the ruling could affect up to 100,000 people.

MSPB based its decision on the 1994 Uniformed Services Employment and Reemployment Rights Act, which prohibits discrimination against workers because of their service in the military. The government argued that the 1940 Barring Act, which gives OPM authority to settle claims involving leave, requires that claims be received within six years of the wrongdoing. The act includes a caveat, however, saying this rule applies "except...as provided in this chapter or another law." The board ruled that since there is no time limit under USERRA, that law negates the Barring Act.

The board also noted that because it found that the Barring Act does not apply, that "does not necessarily mean that there is no limit on the extent of the appellants' potential recovery."

Since USERRA was passed in 1994, the board said it could not adjudicate claims made before that date, leaving the decision up to an administrative judge for future claims. Rinckey said even claims back as far as 1980 might be eligible for compensation, and that his firm is currently working on those claims.

The Justice Department, which represented the government in this case, did not respond to phone calls asking for comment.

