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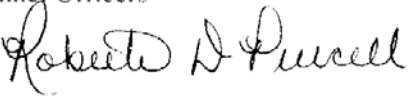
United States
Department of
Agriculture

Office of the
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Office of
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Management

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TO: Deputy Administrators for Management
Mission Area Personnel Officers

FROM: Roberta D. Purcell 
Director
Office of Human Capital Management

SUBJECT: Administrative Claims for Leave as a Result of the Decision in
Butterbaugh v. Department of Justice 336 F.3d 1332 (Fed. Cir. 2003)

This memorandum provides notification of the impact of the decision in the above referenced case and two subsequent Butterbaugh-related decisions issued by the Merit Systems Protection Board (MSPB) on February 27, 2006 – Garcia v. Department of State, 101 MSPR 172 (2006) and Harper v. Department of Navy, 101 MSPR 166 (2006). Affected personnel are individuals who were simultaneously Federal employees and (1) Reservists, including Military Technicians, or (2) members of the National Guard who may have been improperly charged military leave in the circumstances described below.

In Butterbaugh, the United States Court of Appeals for the Federal Circuit reversed the Office of Personnel Management's (OPM) interpretation of section 6323 of Title 5, United States Code (USC), and held that, at least since section 6323(a) was amended on October 1, 1980, it has been clear that Federal employees are required to take military leave only for those days on which they would have been required to work in their civilian jobs. Accordingly, agencies should have been granting employees 15 workdays of military leave for reserve training each year, rather than 15 calendar days.

The Butterbaugh case was brought under the Uniformed Services Employment and Restoration Rights Act of 1994 (USERRA), as amended. Under the Garcia and Harper decisions, the MSPB held that there is no statute of limitations for claims brought under USERRA's procedures, including claims that allege violations of the Vietnam Era Veterans' Readjustment Act of 1974, USERRA's predecessor statute. The Garcia and Harper decisions have become final and constitute controlling law. OPM does not plan further appeal of these decisions and has recommended that individual Departments consult with their Offices of General Counsel to issue individual Departmental policies.

In accordance with the Garcia and Harper decisions, the Department of Agriculture (USDA) will process administrative claims covering military leave granted dating back to October 1, 1980, the effective date of the amendment to 5 USC 6323(a) that was interpreted by the court in Butterbaugh. Therefore, current Federal employees, as well as those who have retired or separated from the USDA, who (1) were charged military leave while they were employees, and (2) believe they have a valid leave claim under

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Butterbaugh may file claims with the USDA agency that charged them the leave. As in all leave claims, the burden of proof is on the employee. An employee making a claim must supply a copy to his or her employing agency of the employee's military orders, certification of attendance, or other documentation indicating that he or she engaged in one or more periods of active military duty that included non-workdays. Employees who have filed claims that have not yet been adjudicated, or that have been processed under prior guidance, may also submit amended claims that seek relief covering periods of military leave dating back to October 1, 1980.

Any annual leave credited as a result of an employee's successful claim must be placed in a restored leave account in accordance with 5 USC 6304(d)(1)(a) and OPM's regulations at 5 CFR 630.306. Employees must use restored leave by the end of the leave year that is in progress two years after the date of leave restoration. Employees who have retired or separated may file a claim with their former agency and must receive a lump-sum payment for any annual leave recredited as a result of that successful claim, paid at the rate of pay the employee was earning at the time of his or her separation or retirement.

Please ensure that your employees are made aware of the contents of this memorandum. If you have any questions concerning the procedures for filing claims under Butterbaugh, please contact Patty Moore of my staff at (202) 720-8629.

