

Date: April 14, 2004
Matter of: [name]
File Number: 04-0011
OPM Contact: Deborah Y. McKissick

The General Counsel's Office, Executive Office for United States Attorneys (EOUSA), United States Department of Justice, filed a claim for relocation bonus on behalf of [claimant]. *See* 5 CFR 178.102(b). The claimant requests payment of a relocation bonus from the agency. The claimant was an applicant for employment with EOUSA. We received the claim with the agency's administrative report on December 17, 2003. For the reasons discussed herein, the claim is denied.

The claimant believes that he is entitled to payment of a \$15,000 relocation bonus. The claimant relocated from Texas to Washington, DC on the strength of an electronic message (e-mail), dated July 17, 2002, from a Supervisory Security Specialists informing the claimant that he was hired for a Security Specialist position.

The agency administrative report states that on June 3, 2002, the agency informed the claimant by telephone that he was tentatively selected for the position of Physical Security Specialist, GS-0083-12, with the Security Programs Staff (SPS), EOUSA. During the claimant's April and May 2002 interviews, and his June 3, 2002, telephone conversation with an agency representative, it was explained that the agency's offer would be provisional contingent upon successful adjudication of a background investigation. During the telephone conversation, the Assistant Director of SPS "indicated that EOUSA was willing to provide a \$15,000 relocation bonus." On June 5, 2002, the claimant was formally notified of his tentative selection pending the outcome of his background investigation, but a relocation bonus was not mentioned.

The report states that the agency notified the claimant, by a letter dated August 26, 2002, of its decision to rescind the agency's conditional offer of employment as a result of the information obtained in the background investigation. The agency further explained that the claimant was never appointed to the position, and never signed a written service agreement agreeing to complete a specific period with the agency in connection with receipt of a relocation bonus.

Section 5753 of title 5, United States Code, reads,

(a) The Office of Personnel Management may authorize the head of an agency to pay a bonus to an employee who is newly appointed to a position under the General Schedule, or to an employee under the General Schedule or under any other pay authority in the executive, legislative, or judicial branch who must relocate to accept a position under the General Schedule, if the Office determines that the agency would be likely, in the absence of such a bonus, to encounter difficulty in filling the position.

(b)(1)(B)(2) Payment of a bonus under this section shall be contingent upon the employee entering into an agreement with the agency to complete a period of employment with the agency

Section 575.203 of title 5, Code of Federal Regulations, part of the regulations implementing Section 5753 of title 5, United States Code, defines Employee as

(a) An individual in the civil service who is relocated without a break in service upon appointment to a position in or under an agency in a different commuting area; or

(b) An employee in or under an agency whose duty station is changed permanently or temporarily to a different commuting area.

Where the agency's factual determination is reasonable, we will not substitute our judgment for that of the agency. See *Jimmie D. Brewer*, B-205452, Mar. 15, 1982. The claimant was never appointed to, or served in, the Security Specialist position with EOUSA. The claimant also never signed a service agreement with the agency. Accordingly, the claim is denied.

This settlement is final. No further administrative review is available within OPM. Nothing in this settlement limits the employee's right to bring an action in an appropriate United States Court.