

Compensation Claim Decision
Under section 3702 of title 31, United States Code

Claimant: [name]

Organization: 355th Mission Support Squadron (ACC)
Department of the Air Force
Davis-Monthan Air Force Base, AZ

Claim: Request for Highest Previous Rate

Agency decision: Denied

OPM decision: Denied

OPM contact: Robert D. Hendler

OPM file number: 05-0021

/s/ for

Robert D. Hendler
Classification and Pay Claims
Program Manager
Center for Merit System Accountability
Human Capital Leadership
and Merit System Accountability

9/8/2006

Date

The claimant is employed in a [GS-9] position with the 355th Civil Engineer Squadron, Department of the Air Force, at Davis-Monthan Air Force Base, Arizona. The claimant was hired in this position on August 9, 2004, and is requesting back pay with interest for incorrect pay-setting upon reemployment. The Office of Personnel Management (OPM) received the compensation claim on June 6, 2005, the agency administrative report (AAR) on September 1, 2005 and an amended AAR on March 8, 2006. For reasons discussed herein, the claim is denied.

The claimant and agency agree Air Force pay-setting regulation AFI 36-802 requires using the General Schedule (GS) maximum payable rate (MPR) rule to set the pay of a former Federal civilian employee who is reemployed on a continuing appointment within two years of a voluntary separation. The claimant asserts the agency should have used the MPR rule to set his pay equal to his highest previous rate (HPR) from his former GS-11, step 10, position.

The claimant submitted copies of his Notification of Personnel Action Forms (SF-50) documenting his resignation from a [GS-11], step 10, position effective January 10, 2004, with a rate of basic pay of \$55,873, and his subsequent reemployment in his current civilian position on August 9, 2004. Upon reemployment the claimant's rate of basic pay was set at GS-9, step 10 (\$47,422). The AAR states the claimant's HPR (\$55,873) was considered, and his salary was set at the maximum rate for the GS-9 position to which he was appointed.

The MPR rule allows an agency to set pay for a GS employee at a rate above the rate that would be established using normal rules, based on a higher rate of pay the employee previously received in another Federal job; i.e., his or her HPR. The claimant misconstrues this rule as permitting him to receive his highest previous rate of pay upon reappointment at grade GS-9. The pay set under the MPR rule may not exceed the rate for step 10 of the GS grade *of the position in which the employing is being placed* or be less than the rate to which the employee would be entitled under normal pay-setting rules. As stipulated in 5 CFR 531.203(c) in effect in 2004, the MPR is determined as follows:

Step A: Compare the employee's highest previous rate with the rates of basic pay in effect at the time the highest previous rate was earned for the grade in which pay is currently being fixed.

Step B: Identify the lowest step of the grade in which pay is currently being fixed, for which the rate was equal to or greater than the employee's highest previous rate at the time the highest previous rate was earned. If the employee's highest previous rate was greater than the maximum GS rate for the grade, identify the step 10 rate.

Step C: Identify the current rate of basic pay for the step identified in step B. This rate is the maximum payable rate of basic pay that may be paid the employee.

Comparison of the claimant's HPR (\$55,863) with the applicable GS-9 rates reveals the claimant's HPR was greater than the step 10 rate. Therefore in accordance with step B above, step 10 was identified and pay set accordingly.

OPM does not conduct investigations or preside over adversary hearings in adjudicating claims, but relies on the written record submitted by the parties. *See Frank A. Barone*, B-229439, May 25, 1988. Where the record presents a factual dispute, the burden of proof is on the claimant to establish the liability of the United States, and where the agency's determination is reasonable, OPM will not substitute its judgment for that of the agency. *See, e.g., Jimmie D. Brewer*, B-205452, March 15, 1982, as cited in *Philip M. Brey*, B-261517, December 26, 1995. OPM concludes that the employee's pay has been properly set at GS-9, step 10, under the controlling MPR regulation, and no further adjustment is warranted.

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