Date: February 16, 2006

Claimant: [name]

File Number: 05-0041

OPM Contact: Robert D. Hendler

The claimant occupies a [GS-11] position with the U.S. Department of the Air Force at Fairchild Air Force Base, Washington. On November 8, 2004, the U.S. Office of Personnel Management (OPM) received a claim dated October 21, 2004. OPM issued a decision on this claim on December 22, 2004. On November 8, 2004, OPM received a second compensation claim dated November 5, 2004, for reduced salary and resulting debt. The claimant disagrees with his agency's pay setting decision of January 12, 2003, when his pay retention was terminated. On December 20, 2004, OPM received a third compensation claim dated December 17, 2004, for lost employment opportunity based on violations of the U.S. Department of Defense Priority Placement Program, lost moving expenses, lost value of real estate, lost wages and benefits associated with his spouse's career, diminished quality of life, personal injury due to humiliation and stress, and ability to meet family financial requirements. For the reasons discussed herein, the second and third compensation claims are denied.

The claimant accepted a priority placement program offer leaving his [GS-12] position at Mare Island Shipyard in Vallejo, California, to accept a [GS-11] position at Fairchild Air Force Base, in Spokane, Washington. Because his placement was as the result of reduction-in-force procedures due to the Mare Island Shipyard being closed, the claimant was entitled to grade retention for two years followed by pay retention. Pay retention was authorized when, at the expiration of two years of grade retention, his rate of basic pay was higher than the GS-11, step 10, salary on Special Salary Rate Table 414 which covers engineers in selected series worldwide. The employee received the Rest of U.S. locality payment on top of his retained rate. On January 12, 2003, the claimant's pay retention was terminated when the statutory pay increase caused his rate of basic pay (excluding locality pay) to fall within the GS-11 rate range of the 2003 Special Salary Table 414. The employee's pay was set at the GS-11, step 10, special rate on Special Salary Rate Table 414; and the employee received the GS-11, step 10, special rate because this rate exceeded the GS-11, step 10, Rest of U.S. locality rate.

The claimant believes that the reduction of his total pay on January 12, 2003, was a violation of "5 USC 5305 and 5 CFR 530.3 in the AFI." He wrote "the provision to terminate retained pay are provided to prevent someone's salary from being reduced blow the top of the Grade that they were lowered to....The agency has manipulated and mixed the codes of federal regulations that

address pay setting provisions covering retained pay." He stated that the codes specifically prohibit lowering of any pay due to the existence of these codes that establish special pay rates.

The agency advised the claimant that an employee who, at the time of a statutory pay increase is receiving pay retention, is entitled to receive 50 percent of the difference between the maximum rate of basic pay on the previous year's salary table and the maximum rate of basic pay on the current year's salary table. (Section 536.205(c), title 5, Code of Federal Regulations, as in effect in January 2003.) This amount is added to the employee's existing retained rate of basic pay. If an employee is occupying a position covered by a special salary rate, the applicable special salary rate table is used to calculate the employee's new retained rate of basic pay. When there is an increase in the scheduled rates of basic pay for the grade of the employee's position and the employee's new retained rate of basic pay (excluding locality pay) becomes equal to or lower than the maximum rate of basic pay for that grade (including any special rate, but excluding locality pay), the employee is entitled to the maximum rate of that grade and pay retention ceases. (See section 536.205(d), title 5, Code of Federal Regulations, as in effect in January 2003.) Locality pay is not considered a "rate of basic pay" for the purpose of applying pay retention provisions. (See section 531.606(b) and the definition of "rate of basic pay" in section 536.102, title 5, Code of Federal Regulations, as in effect in January 2003.)

The agency stated that the claimant's retained rate of basic pay before the 2003 statutory pay increase was \$59,984 (excluding locality pay). The maximum rate of basic pay for a GS-11, step 10, on the 2003 Special Salary Rate Table 414 was \$61,605, while the maximum rate of basic pay for a GS-11, step 10, on the 2002 Special Salary Rate Table 414 was \$59,741. The agency calculated the difference between the 2002 and the 2003 rates as \$1,864. Fifty percent of the difference was \$932. That amount was added to \$59,984, the claimant's retained rate of basic pay before the 2003 statutory pay increase, resulting in a new rate of basic pay for 2003 of \$60,916. Since \$60,916 fell within the rate range of the 2003 Special Salary Rate Table 414 for GS-11, the claimant's rate of basic pay was set at \$61,605, which was GS-11, step 10, on the 2003 Special Salary Rate Table 414.

The agency then determined whether the claimant was eligible to continue receiving locality pay. An employee occupying a position covered by a special salary rate is eligible to receive locality pay only to the extent that the amount of the locality pay on the regular GS locality pay table exceeds the employee's special salary rate. If an employee's special salary rate exceeds the regular GS locality pay table, the employee is not eligible to receive the locality pay. (Sections 531.606(k) and 531.606(f)(4), title 5, Code of Federal Regulations)

The agency stated that the claimant's salary was \$61,605, GS-11, step 10 on the 2003 Special Salary Rate Table 414. The 2003 salary table Rest of U.S. covering Spokane, Washington, indicated that \$61,248 was the GS-11, step 10, salary. Since this amount was less than the claimant's basic salary from Special Salary Rate Table 414, the claimant was not entitled to locality pay.

Section 531.606(a) title 5, Code of Federal Regulations, states, in part:

An employee shall receive the greatest of his/her rate of basic pay, including any applicable special salary rate established under 5 U.S.C. 5305 or similar provision of law....or a locality rate of pay under this subpart, where applicable.

Section 531.606(f)(4), title 5, Code of Federal Regulations states:

Entitlement to a locality rate of pay established for a locality pay area under this subpart terminates on the date that an employee's special salary rate under 5 U.S.C. 5305 exceeds his or her locality rate of pay.

Section 531.606(k), title 5, Code of Federal Regulations states:

When an employee's locality rate of pay under this subpart is greater than any applicable special rate under 5 U.S.C. 5305 or similar provision of law (other than section 403 of FEPCA), the payment of the rate resulting from the comparison required by paragraph (a) of this section is deemed to have reduced the locality rate of pay payable under 5 U.S.C. 5304, as authorized by 5 U.S.C. 5305(g)(1).

Section 536.205(d), title 5, Code of Federal Regulations, states:

When, as a result of an increase in the scheduled rate(s) of the grade of the employee's position, an employee's retained rate of basic pay becomes equal to or lower than the maximum rate of that grade, the employee is entitled to the maximum rate of that grade and pay retention ceases.

Section 536.209(a), title 5, Code of Federal Regulations, (Loss of eligibility for, or termination of, pay retention), states:

Eligibility for pay retention, or actual retention of pay, ceases if any of the following conditions occurs at any time after the employee had received written notification that his or her pay is to be reduced:

- (1) The employee has a break in service of one workday or more; or
- (2) The employee is entitled to a rate of basic pay which is equal to or higher than, or declines a reasonable offer of a position the rate of basic pay for which is equal to or higher than, the rate to which the employee is entitled under pay retention; or
- (3) The employee is demoted for personal cause or at the employee's request.

OPM does not conduct adversary hearings, but settles claims on the basis of the evidence submitted by the claimant and the written record submitted by the Government agency involved in the claim. Section 178.105 of title 5, Code of Federal Regulations, *Matter of John B. Tucker*, B-215346, March 29, 1985. Moreover, the burden of proof is on the claimant to prove the liability of the government and his or her right to payment. Section 178.105 of title 5, Code of

Federal Regulations, *Matter of Jones and Short*, B-205282, June 15, 1982. Thus, where the written record presents an irreconcilable dispute of fact between a Government agency and an individual claimant, the factual dispute is settled in favor of the agency, absent clear and convincing evidence to the contrary. Section 178.105 of title 5, Code of Federal Regulations; *Matter of Staff Sergeant Eugene K. Krampotich*, B-249027, November 5, 1992; *Matter of Elias S. Frey*, B-208911, March 6, 1984; *Matter of Charles F. Callis*, B-205118, March 8, 1982. The agency correctly applied the regulatory provisions cited above. It properly terminated the claimant's pay retention and correctly set the claimant's pay on the effective date of the January 2003 statutory pay increase. Hence, the compensation claim is denied.

OPM's authority to adjudicate compensation and leave claims flows from 31 U.S.C. §3702. The authority in §3702 is narrow and limited to adjudication of compensation and leave claims. Section 3702 does not include any authority to settle claims of lost employment opportunity, lost value of real estate, lost wages and benefits for a spouse's career, diminished quality of life, personal injury due to humiliation and stress, or inability to meet family financial requirements. Section 3702 also does not include any authority to settle claims concerning moving expenses which fall under the jurisdiction of the United States General Services Board of Contract Appeals.

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