

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

Claimant: [name]

Organization: Office of Currency Production
Bureau of Engraving and Printing
Department of the Treasury
Washington, DC

Claim: Pay for Performing Work of a
Higher-Level Position

Agency decision: Denied

OPM decision: Denied

OPM file number: 06-0003

/s/ for

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

7/13/2007

Date

Introduction

The employee submitted his claim request to the U.S. Office of Personnel Management (OPM) through his attorney on October 15, 2004. The claim could not be accepted because the agency, the Bureau of Engraving and Printing (BEP), had not issued a final written decision as required in section 178.102 of title 5, Code of Federal Regulations (CFR). The claim request was resubmitted to OPM on July 20, 2005, after the agency issued a written claim denial on May 2, 2005. The agency's administrative report (AAR) was received on June 27, 2006. Additional information requested from the agency was shared with the attorney whose comments were received February 23, 2007. Two claimants were involved in the initial request and were assigned the same claim number. Upon closer review, it was determined the circumstances of the claims were not exactly the same, and separate decisions are being issued.

The claimant believes his pay as Assistant Supervisor should be set at the highest rate for Assistant Supervisors (40 plus) based on a memorandum from the Manager of the Currency Processing Division, dated September 22, 1998. He is claiming back pay for the difference in pay rates since October 25, 1998. The agency states the claimant was promoted to an Assistant Bookbinder Supervisor position on October 25, 1998, and to Assistant Bookbinder Supervisor II on July 18, 1999. His rate of pay was set at the middle range. He received a temporary promotion to Bookbinder Supervisor II from January 2, 2002 until May 2, 2002. He received another temporary promotion from December 5, 2004, through February 3, 2005, during which time the agency states the claimant was inadvertently paid at the 40 plus rate of pay. The agency representative reports that no attempt was made to recoup the extra payment.

The agency denied the claim stating that all Bookbinder Assistant Supervisor II positions are paid at the 21-39 employee rate in accordance with BEP Bulletin - Wage Adjustment - Washington DC Facility (Prevailing Rate Employees) dated April 21, 2004. The BEP representative states the memorandum cited by the claimant implemented linear supervision within the Currency Processing Division; i.e., all employees, both craft and non-craft, would be accountable to craft supervisors. It further stated that, only in the absence of the primary supervisor, does the assistant supervisor assume the full responsibility of all the employees, craft and non-craft alike. It stated there are currently 28 employees in the claimant's section. It continued to state that due to substantial downsizing within the Office, a higher rate of pay can not be justified when the number of employees over which the Foreman has supervisory responsibilities has diminished, unless such Foreman's pay was "grandfathered" due to the fact that there were 40 or more employees when s/he accepted the position.

Analysis

Section 5349 of title 5, United States Code (U.S.C.) provides that certain agencies, including the Bureau of Engraving and Printing, shall fix and adjust the pay of employees from time to time as nearly as is consistent with the public interest in accordance with prevailing rates and in accordance with such provisions of this subchapter, including the provisions of § 5344, relating to retroactive pay, and subchapter VI of chapter 53 of 5 U.S.C., relating to grade and pay retention, as the pay-fixing authority of each such agency may determine.

The September 22, 1998, memoranda on which the claimant and his representative base their claim, was written by the Manager of the Currency Processing Division and addressed to a

Personnel Specialist in the Office of Human Resources. It is titled Linear Supervision and states the Office of Currency Production recently implemented linear supervision in the Cope Pak and Mechanical Exam Sections. This change was based on a U.S. Secret Service recommendation to streamline the organization and have non-craft supervisors and employees accountable to Craft Supervisors and Craft Assistant Supervisors. This change in structure has created an increase in the number of employees for which Craft Supervisors are responsible. The memo states that, in all cases, the number of employees under the supervision of Craft Supervisors falls between the 40 to 70 pay range. The Manager asks the Personnel Specialist to review the current position descriptions of the jobs identified below to reflect the changes discussed and adjust the salaries of craft supervisors to reflect the higher rate of pay when appropriate. The positions identified were Bookbinder Supervisor, Bookbinder Assistant Supervisor, Bookbinder (Acting) and Cope Pressmen Supervisor, Cope Pressman Assistant Supervisor, and Cope Pressman (Acting). A staffing report was attached to the memorandum to help confirm the justification for the 40 plus pay for craft supervisors. This list provided the job title, pay plan, grade level, number of permanent and temporary employees, and the number of employees required for both branches. There are multiple Supervisors, Assistant Supervisors, Leader, and worker positions listed. However, it provided no information as to the organizational structure or reporting levels within the two branches. The memo states Acting Supervisors, when serving in the absence of the primary Supervisor or Assistant Supervisor should also have their pay adjusted to reflect the higher rate of pay.

The AAR includes a Declaration from the Manager of the Currency Processing Division, who is now the Chief, Office of Currency Production. Briefly, the Secret Service report resulted from an extensive review of BEP accountability, security, and supervisory structures. The purpose of his memorandum to the HR office was to set out how he hoped to carry out the review recommendations. Linear supervision was implemented. He stated BEP sets pay for craft supervisors based on the number of employees supervised. Because craft supervisors were ultimately responsible for the entire production section, they received the highest pay as long as they actually supervised 40 or more employees. Assistant supervisors could not receive "credit" for the same employees and did not have their pay set at the higher rate. He states it is important to note that as automation increased, some supervisor positions which once supported the highest level no longer met the requirements. Supervisors in this situation maintained the highest rate until they vacated the positions and as positions were backfilled, the appropriate rate was set based on actual number of employees supervised. Assistant supervisors currently receive the middle pay rate (21 to 39 employees).

The AAR also includes a Declaration from the HR specialist who was the recipient of the Currency Processing Manager's memo. She indicated it is the Office of Human Resources Policy Division's responsibility to ensure pay equity, not the managers. This is verified by the BEP Bulletin on Wage Adjustment-Washington DC Facility (Prevailing Rate Employees) which cites the Office of Human Resources as the office of primary responsibility. In this case, the HR Office rejected an increase in the pay of Assistant Supervisors across the board. The HR specialist indicated it has been established and well documented that an Assistant Supervisor's pay is set at a percent level below that of the Supervisor. The AAR includes a report of pay for the years 2000 through 2006 showing the pay rates for supervisors and assistant supervisors in the bookbinder and pressman occupations. Except for one individual who the agency states was paid in error in 2003, all assistant supervisors were shown to be paid at the middle range; i.e., 21 – 39.

The initial declaration from the claimants' independent classification and pay consultant states that after a review of the claim record for each employee, it is his opinion they have been continuously and erroneously underpaid. He bases his conclusion on the 1998 memorandum which he believes established BEP pay policy that continues in effect. He states his review of the position descriptions (PDs) of the claimants show they have served as "alter egos" of the supervisors and "from a job classification standpoint, there is no justification for paying Assistant Supervisors at a lower pay rate than the Supervisors. In fact, this would appear to be in direct contravention of the BEP pay policy as stated by Mr. Brent in 1998." He states he has reviewed the agency's letters denying the claims and believes the agency representative has failed to address the central point of the claims; i.e., according to nondiscretionary agency pay policy (the Brent memorandum), they have been underpaid since 1998.

In his supplemental declaration, the consultant asserts the agency does not deny the claimants have been responsible for supervising all employees and that at all material times, the number of these employees has fallen within the 40-70 pay range, in accordance with the September 22, 1998, memo. He states the claimants' purpose is to receive the full and correct compensation as Assistant Supervisors at the 40+ pay range rather than pay as a full Supervisor.

First, we do not find the memorandum on which the claimants, the attorney, and the consultant base their case can be considered as "BEP pay policy." The record shows the Office of Human Resources Policy Division is the office that has primary responsibility for pay matters, not the Currency Processing Division manager.

As stated in the AAR, most assistant or deputy positions are intended as an auxiliary to the full supervisor position to which it reports. However, they do not function in an equivalent capacity of the full supervisory position until that person is absent. The PD (number 12877) for the Bookbinder Assistant Supervisor II showing pay plan and occupational code WE-4441 and unclassified grade, was submitted by the claimant's representative. It states this is a universal PD used for the offices of currency production and stamp production in Washington, DC, and the currency manufacturing division in Fort Worth. It includes a statement of differences, stating the position "is essentially the same as the Bookbinder Supervisor II PD with the exception of the established Supervisory Controls and the amount of guidance and control exercised over the position by the Bookbinder Supervisor II and appropriate Division Manager." It indicates the Assistant Supervisor works under the direct supervision of the Supervisor, who "provides specific instructions that are in concert with communicated desired results." The Assistant Supervisor "is given less latitude than his supervisor to make far-reaching changes that have a direct impact on spoilage, production, equipment downtime, and issues that may impact the next phase of the operation and perhaps the customer." It states, in the absence of the supervisor, the Assistant "assumes full responsibility of the efficient operation of the assigned section." The PD then describes the major duties involved in supervising the operation of the different types of equipment used in the currency and postage stamp operations in use at the different facilities. It contains no reference to the size of the organization or number of employees supervised.

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. 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. 5 CFR 178.105; *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.

Under 5 U.S.C. 5349, it remains the responsibility of the BEP's pay fixing authority to determine the rates paid for their various occupations. The BEP HR Policy Office is responsible for determining the procedures used to implement pay determinations. The record shows the claimant was paid consistently with other Assistant Supervisors in accordance with the BEP stated pay practice. The PD, in and of itself, does not represent a formal record on which pay-setting actions are based. Rather, it is the process described by BEP which is used to pay Assistants at the mid range – and that constitutes the practice implemented under section 5349 and upon which we will judge the claim. The claimant does not provide a creditable argument for error on the part of the agency. Therefore, we find the agency did not err in determining the rate of pay for Acting Supervisor positions and that their action was based on controlling statute, regulation, and practices; and it was not arbitrary, capricious, or unreasonable. Therefore, the claim is denied.

The consultant's statement "from a job classification standpoint, there is no justification for paying Assistant Supervisors at a lower pay rate than the Supervisors" attempts to address the classification of the positions, rather than the pay claim which was filed. Implicit in the consultant's rationale is an attempt to conflate his disagreement with the PD and rate of pay rate to which the claimant was and is assigned; i.e., 13-39 range versus 40+ range, with the claims settlement process. Even though 5 U.S.C. § 5112 and § 5346(c) authorize OPM to decide position classification and job grading appeals, respectively, for positions subject to OPM's classification and job grading authority, OPM's authority to adjudicate compensation and leave claims flows from a different law -- 31 U.S.C. § 3702. The authority in § 3702 is narrow and limited to adjudications of compensation and leave claims. Section 3702 does not include any authority to decide position classification or job grading appeals. Therefore, OPM may not rely on 31 U.S.C. § 3702 as a jurisdictional basis for deciding position classification or job-grading appeals and does not consider such appeals within the context of the claims adjudication function that it performs under § 3702. *Cf. Eldon D. Praiswater*, B-198758, December 1, 1980 (Comptroller General, formerly authorized to adjudicate compensation and leave claims under section 3702, did not have jurisdiction to consider alleged improper job grading); *Connon R. Odom*, B-196824, May 12, 1980 (Comptroller General did not have jurisdiction to consider alleged improper position classification).

We have fully considered the statement of the independent classification and pay consultant; however, we find it contradictory to classification policy and guidance found within OPM's white and blue collar supervisory standards and basic classification principles and policies to which the consultant refers and which program he once directed. The claimant was not responsible for the complete operation of his assigned organizations on a regular and recurring basis. Rather, he was acting only in the absence of the designated supervisor.

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