

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

Claimant: [name]

Organization: Division of Fire and Aviation
Visitor and Resource Protection Branch
Operations Division
National Park Service
U.S. Department of the Interior
Boise, Idaho

Claim: Compensation for Higher Graded
Work in a Former Position

Agency decision: N/A

OPM decision: Denied

OPM contact: Robert D. Hendler

OPM file number: 07-0020

/s/ Robert D. Hendler

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

3/16/2007

Date

The claimant, currently employed as a [position] with the Bureau of Land Management, U.S. Department of the Interior, requests she be paid for performing what she believes was higher graded work in a position she previously held in the Division of Fire and Aviation, Visitor and Resources Protection Branch, Operations Division, National Park Service, U.S. Department of the Interior, in Boise, Idaho. The claimant states her request to the Office of Personnel Management (OPM) is based upon “the inconsistencies between my former supervisor’s...statements and my statements during independent interviews....” as part of the classification appeal she filed with her former agency. The claimant seeks to receive compensation for a position she no longer occupies based on what appears to be her belief the classification appeal decision denying her request for upgrading her former position from the GS-11 to the GS-12 grade level was based on “inconsistent information.” As a result, she believes the wrong classification standard was used to evaluate her work. For the reasons discussed herein, the claim is denied.

The record is unclear as to the legal and regulatory basis of the request. The claimant appears to be requesting back pay for a period of time she believes she performed higher graded duties. Our authority in section 3702, title 31, United States Code (U.S.C.) to adjudicate compensation and leave claims extends to claims for back pay. However, her request cites instructions on filing classification appeals, and requests our “reevaluation of this position description.” The claimant included a copy of a position description for an Administrative Officer, GS-341-11, position which she occupied with her former employing agency. The agency appeal decision affirming its proper classification at the GS-11 grade level is dated November 17, 2006. Based on the December 12, 2006, date of her claim request to OPM, we must conclude that position remained classified at the GS-11 grade level at the time she left her former agency.

Under 5 U.S.C. §5112, OPM is authorized to decide position classification appeals. The clear and unambiguous language of 5 U.S.C. 5112(b) requires us to adjudicate appeals under the provisions of subsection (a). That subsection requires that we “ascertain currently the facts as to the duties, responsibilities, and qualification requirements of a position.” This statutory requirement is reiterated in section 511.607(a)(1), title 5, Code of Federal Regulations and cannot be met if the requesting employee no longer performs the work of the position that he or she wishes to appeal. Therefore, the claimant’s apparent request to file a classification appeal with OPM on a position she no longer occupies is barred by controlling statute and regulations.

Even assuming, *arguendo*, that a favorable classification action had resulted from her agency classification appeal, the claimant may not be awarded back pay. It is well settled that employees are not entitled to back pay for periods of misclassification (5 U.S.C. 5596(b)(3)). See *United States v. Testan*, 424 U.S. 392, 400 (1976) and *Erlyn D. Felder*, B-202685, August 17, 1982.

This OPM settlement of the claim 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.