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

Claimant: [name]

**Organization:** [agency component]

Indiana National Guard Alexandria, Indiana

**Claim:** Retroactive Promotion Due to

Improper Job Grading

**Agency decision:** N/A

**OPM decision:** Denied; Lack of Jurisdiction

**OPM file number:** 07-0035

/s/ for

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

8/20/2007

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Date

The claimant, who retired from the Indiana National Guard, requests he be retroactively promoted based on his agency's failure to properly apply the 2604 Electronic Mechanic jobgrading standard (JGS) to the job from which he retired. As a result, he asserts his job should have been upgraded to WG-12. He requests a retroactive pay increase to WG-12 from WG-9 and adjustment to his retirement pay based on that change. The U.S. Office of Personnel Management (OPM) received the claim request as an enclosure to a December 5, 2006, letter from the claimant's U.S. Representative. For the reasons discussed herein, the claim is denied for lack of jurisdiction.

Part 178 of title 5, Code of Federal Regulations (CFR), concerns the adjudication and settlement of claims for compensation and leave performed by OPM under the provisions of section 3702(a)(2) of title 31, United States Code. Section 178.102(a)(3) of 5 CFR requires that an employing agency already has reviewed and issued an initial decision on a claim before it is submitted to OPM for adjudication. Based on the information submitted, we find no record of the claimant having filed a claim with his former employing agency or having received a written agency-level denial of claim on the matter at issue in his request. However, we may render a decision on this matter based on jurisdictional grounds.

Even though 5 U.S.C. § 5112 and § 5346(c) authorize OPM to decide position classification and job-grading appeals, respectively, OPM's authority to adjudicate compensation and leave claims arises from a different law -- 31 U.S.C. § 3702. OPM's authority under 31 U.S.C. § 3702 is narrow and 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 section 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).

Under 5 U.S.C. § 5346(c), OPM is authorized to decide job-grading appeals. The clear and unambiguous language of 5 U.S.C. § 5346(c) requires OPM to "ascertain currently the facts as to the duties, responsibilities, and qualification requirements of a position" which is under appeal. This statutory requirement is reiterated in OPM regulations set forth in section 532.701 of title 5, Code of Federal Regulations (CFR), which states "A prevailing rate employee may at any time appeal the occupational series, grade, or title to which the employee's job is assigned" and 5 CFR. § 532.705(c) which permits OPM to investigate or audit the job. These requirements cannot be met if the requesting individual is no longer a Federal employee and, thus, also no longer performs the work of the job at issue. Therefore, the claimant, as a retiree, has no standing to appeal the grade of the job from which he retired.

Even assuming, *arguendo*, that a favorable job-grading action had resulted from a job-grading 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.