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

Claimant:	[name]
Organization:	U.S. Environmental Protection Agency Arlington, Virginia
Claim:	Refund of Monies Paid to Bankruptcy Trustee
Agency decision:	Denied
OPM decision:	Denied; Lack of Jurisdiction
OPM file number:	07-0038

/s/ for

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

8/20/2007

Date

The claimant is a former employee of U.S. Environmental Protection Agency (EPA) in Arlington, Virginia. Based on information in the record, it appears her employment with EPA ended sometime before February 8, 2000. She requests the U.S. Office of Personnel Management (OPM) direct EPA to return monies submitted on her behalf to a Chapter 13 Trustee based on her view the Order requiring EPA to pay a portion of her wages to the trustee was "not in alliance with the payroll for federal protection" as stated in her February 5, 2007, claim on this matter which she sent to EPA. OPM received the claim request on July 28, 2007. For the reasons discussed herein, we do not have jurisdiction to consider this claim.

The record shows the claimant sent two letters to EPA on February 5, 2007; one seeking the return of monies as previously described and another on a series of other employment issues. As stated in her July 4, 2007, letter to OPM, her claim is limited to EPA's denial of the return of those monies previously described. The claimant raised this matter in letters to OPM dated August 28, and September 10, 2002, requesting assistance in obtaining "monies confiscated through improper procedures" and to return her health insurance. OPM's letter of September 26, 2002, advised the claimant we could not accept and process a potential claim from her until she had received a claim denial from EPA. The enclosure to the claimant's July 4, 2007, letter indicated she sent correspondence on this matter to OPM's Office of the Inspector General (IG) which referred the matter to EPA's Office of the Inspector General. At our request, OPM's IG provided a copy of the documents they received from the claimant to ensure we considered all information in OPM's possession in responding to this claim request.

The claimant's letters cause us to conclude she is not familiar with OPM's role and responsibility with regard to Federal employment issues, e.g., "I am not sure what "adjudicate" means in the context of this [September 26, 2002] letter....Understanding EPA's letter would help me focus." Under section 3702(a)(2) of title 31, United States Code (U.S.C.), OPM is responsible for adjudicating, also known as settling, Federal civilian employee compensation and leave claims. Implemented by part 178 of title 5, Code of Federal Regulations (CFR), OPM makes the final administrative determination for the Government on certain compensation and leave disputes between employees or former employees and their employing or former employing agencies based exclusively on the written record (5 CFR 178.105). As a formal administrative process, OPM does not and may not provide "assistance" to a claimant in an advisory or advocacy capacity.

In her February 5, 2007, claim letter to EPA, the claimant states the "removal" (garnishment) of her pay which began in January 1995 "was processed as a child support/alimony payment." However, she also states "These deductions were sent to Thomas L. Lackey, Trustee for Chapter 13 issues." The record includes a U.S. Bankruptcy Order Confirming Plan (Case N. 94-1-2849-PM) under Chapter 13 and an Employer's Payment Order, both dated September 12, 1994, and both stamped as filed on September 16, 1994. In her July 4, 2007, letter to the OPM IG, the claimant states "the case closed January 3, 2001 EPA stopped my payroll funds January/February 2000." The record includes a December 22, 1994, letter from EPA to the claimant informing her it had received the Order for \$247.00 monthly, would deduct \$114.00 biweekly beginning with the first pay period after the date of the letter, and would forward that money to the bankruptcy trustee. The letter states:

Under the provisions of 28 U.S.C. Section 1471(e) and Title 11 U.S.C. Section 1325(b) the court has exclusive jurisdiction of all property including the earnings from service performed by the debtor during the pendency of the case.

Therefore, we must conclude the period of the claim is from the first pay period after December 22, 1994, until no later than February 2000 when EPA stopped withholding the contested funds.

In her July 4, 2007, the claimant questions the propriety of EPA's garnishing of an amount different from the judge's Order "thereby voiding that Order." She states "It seems the CFR contradicted the [U.S.] code or someone did not get the Civil Rights infringed" which, again, appears to refer to the propriety of the withholding process. The claimant further asserts "The \$247.00 the court required was well beyond the limit of the law (Finance law)." In conjunction with that assertion, the claimant states the "remaining \$19.00 was forced from me to the Court. Although the law said I did not have those funds, payment was mandatory. Discretionary versus survival spending is applied to all to ensure civil rights are not violated." The claimant refers to a report titled Remittance Record for Alimony/Child Support containing the Trustee's name and address with her bankruptcy case number, but states "there is no record of Bankruptcy payment to Mr. Lackey." The claimant also asserts her claim is the third request to have the records corrected; the prior two attempts were made with the EPA Assistant General Counsel.

The claimant's attempt to file a claim under 31 U.S.C. § 3702(a)(2) reflects a basic misunderstanding of the constitutional separation of powers. Whether during the active phase of her bankruptcy case or, as it appears, subsequent to its conclusion, the U.S. Bankruptcy Court retains jurisdiction over the matters at issue in this claim. Executive agencies are required to follow court orders, and the court retains exclusive jurisdiction over complaints asserting violation if its orders. Therefore, OPM has no jurisdiction to intervene in what is, at its heart, a dispute over the implementation of the U.S. Bankruptcy Court Order. If the claimant believes monies were not properly disbursed by the Trustee to the only debtor listed in the Plan, or there is a balance held by the Trustee or, what appears to be the claimant's belief that there was an excessive amount ordered withheld by the U.S. Bankruptcy Court, these issues are properly raised with the U.S. Bankruptcy Court.

We note under the provisions of 5 U.S.C. § 5520a(g):

Neither the United States, an agency, nor any disbursing officer shall be liable with respect to any payment made from payments due or payable to an employee pursuant to legal process regular on its face, provided such payment is made in accordance with this section and the regulation issued to carry out this section.

Under 31 U.S.C. § 3702(a)(2), OPM's responsibility would be limited to such matters as challenges to the sufficiency of the garnishment or an agency's liability where the agency neglected to comply with a garnishment order. That is not the situation in the instant case. From the record, and the claimant's own admission, it is clear EPA received a valid garnishment order, the claimant was properly notified, and the monies were forwarded to the Trustee. Although we have no jurisdiction to render a decision on the merits of this case, we consider the claimant's rationale for returning funds to her based on a clerical error frivolous; i.e., mislabeling the payments on her Statement of Earnings and Leave and the remittance report. The agency claim denial concedes this clerical error and documents the record appropriately.

Although we have no jurisdiction to render a decision in this matter, we also note the burden of proof is on the claimant under 31 U.S.C. § 3702(a)(2) to establish the timeliness of the claim, the liability of the United States and the claimant's right to payment (5 CFR 178.105). Claims must be in writing and must be signed by the claimant or the claimant's representative (5 CFR 178.102(a)). In accordance with the Barring Act, 31 U.S.C. § 3702(b)(1), every claim against the United States is barred unless such claim is received within six years after the date such claim first accrued. Matter of Robert O. Schultz, B-261461 (November 27, 1995). The Barring Act does not merely establish administrative guidelines; it specifically prescribes the time within which a claim must be received in order for it to be considered on its merits. Matter of Nguyen Thi Hao, B-253096, (August 11, 1995). OPM does not have any authority to disregard the provisions of the Barring Act, make exceptions to its provisions, or waive the time limitation that it imposes. See Matter of Nguyen Thi Hao, supra; Matter of Jackie A. Murphy, B-251301 (April 23, 1993); Matter of Alfred L. Lillie, B-209955, May 31, 1983. The record shows the claimant did not preserve the claim until it was received by EPA on February 5, 2007, approximately seven years after the claim accrued as asserted by the claimant; i.e., January/February 2000. Therefore, the law would preclude us from considering this claim if it was under OPM's jurisdiction.

This settlement 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.