

**U.S. Office of Personnel Management
Leave Claim Decision
Under section 3702 of title 31, United States Code**

Claimant: [name]

Organization: Department of the Navy

Claim: Incorrect calculation of salary overpayment; calculation and reimbursement of lump-sum annual leave payment

Agency decision: Denied

OPM decision: Denied

OPM file number: 10-0008

/s/ Judith A. Davis
Robert D. Hendler
Classification and Pay Claims
Program Manager
Merit System Audit and Compliance

11/15/2012
Date

The claimant was employed by the Naval Air Systems Command (NAVAIR), Department of the Navy (DON), before his disability retirement on July 3, 2006. In his initial claim request received by the U.S. Office of Personnel Management (OPM) on March 19, 2008, he disputed the determination of his DON payroll provider, the Defense Finance and Accounting Service (DFAS), that he was indebted to the Government for salary overpayment during the tax years 2003 through 2006 and requested reimbursement of the lump sum annual leave payment that was applied to the debt. OPM advised the claimant in its March 31, 2008, letter that his claim could not be accepted because he had not filed a claim with his former employing agency and received a final agency denial as required by regulation before a filing a claim with OPM. *See* 5 CFR 178.102(a). The claimant subsequently filed a claim dated May 5, 2008, with DON. This claim was received by DON on May 12, 2008, and the claim is preserved as of that date.

By letter dated October 9, 2009, the claimant provided a copy of DON's September 15, 2009, letter denying his claim. The agency had advised him in this letter that DFAS' April 24, 2008, response to a Congressional inquiry on his behalf represented the final agency decision on this matter. On November 17, 2009, OPM accepted the claim and requested an agency administrative report (AAR), which was received on January 12, 2010. The claimant submitted a response to the AAR dated January 25, 2010.

In his initial claim request, the claimant states he "was totally disabled on February 12, 2000, was put on inactive status, and was not taken off [his] employers' rolls until the pay period ending 07/22/2006." During this period, he received Workers' Compensation and then Social Security Disability benefits except for one week worked in February 2003, which led to the reactivation and resubmission of his time sheets. As a result, in 2003, 2004, and 2005, the claimant states "DFAS began periodically sending me money/checks," initially as direct deposits and later as checks mailed to his home. He states that although he initially deposited the checks received, he returned the full amounts to DFAS at the end of each year, and beginning with the check for pay period ending August 20, 2005, he returned all checks to DFAS with a letter stating the payment was incorrect. However, when he retired in July 2006, DFAS applied his lump sum annual leave payment to offset of indebtedness.

By subsequent letter dated March 31, 2007, DFAS notified the claimant that an audit conducted of his account determined the gross amount of his "overpayment (including pay, all taxes, benefits and other deductions)" for the period in question was \$9,772.52, and instructed him to "remit the repayment in the net amount of \$3,482.16." At his request, DFAS later provided the claimant with audit worksheets dated March 11, 2008, showing their calculations. The claimant disputed the calculations and, following the Congressional inquiry cited above, DFAS conducted another audit of his pay records and provided additional worksheets and a narrative audit summary with the following conclusions in their April 24, 2008, response:

[H]is debt is a result of incorrect processing of his time and attendance records. His time and attendance hours were originally reported as regular work hours and were subsequently changed to reflect he was paid by the Office of Workers' Compensation (OWCP), which is a non-pay status for civilian employees. The first overpayment was identified in 2004; however, this incorrect reporting continued to occur for each year after, which established a debt on his account until his time of separation. We have

enclosed a narrative audit summary. [The claimant] is due a refund in the amount of \$1,385.51.

However, the claimant continues to assert the DFAS calculation of his salary overpayment is incorrect.

Lump-sum annual leave calculation

In his January 25, 2010, response to the AAR, the claimant asserts DON/DFAS still owes him his "vacation pay" less the \$1,386.51 refunded in 2008 as a result of the Congressional inquiry. The claimant seeks a lump sum payment of \$9,842.48 for the 202.47 hours of annual leave accumulated at the time of his accident, based on the salary table in effect in 2010 when he filed his claim. He asserts "[t]he \$9,842.48 should be paid in full without any deductions because, I was totally and permanently disabled on February 12, 2000, I am on Medicare, and I am not subject to withholding of any kind." He asserts the lump-sum payment should be calculated as follows:

202.47 hours X \$55.46 per hour: \$11,228.99 - \$1,386.51 = \$9,842.48 (See Attachment# 6, 2010 GS 13 Step 10, MD Locality adj. for the hourly rate and Attachment# 7, LES for PPE 7/22/2006 for the number of hours owed). It should be noted that when DFAS calculated the amount of my accrued vacation pay in the PPE 7/22/2006, and withheld it from me improperly, they used the amount for GS-13 Step 10 in the pay table in effect for 2006 (See Attachment# 8).

The record includes a Leave and Earnings Statement (LES) for pay period ending July 22, 2006, which shows the claimant's lump sum annual leave in the amount of \$9,755 was disbursed, with \$3,960.53 deducted for Federal and State taxes, Social Security, and Medicare, and the remaining \$5,794.47 applied toward debt repayment. The calculation was based on the salary table in effect in 2006, when the claimant left the Federal rolls. Instructions on calculating lump-sum annual leave payments are provided in 5 CFR 550.1205(a), which states:

An agency must compute a lump-sum payment based on the types of pay listed in paragraph (b) of this section, *as in effect at the time the affected employee becomes eligible for a lump-sum payment* under section 550.1203 and any adjustments in pay included in paragraphs (b)(2), (3), and (4) of this section. [Emphasis added]

Thus, the claimant's lump-sum annual leave payment was properly based on the 2006 salary table for the locality pay area of Washington-Baltimore-Northern Virginia in effect when he retired from the Federal service and became eligible for the payment.

Further, 5 CFR 550.1205(f) stipulates the deductions that may not be applied to a lump-sum annual leave payment:

A lump-sum payment is not subject to deductions for retirement under the Civil Service Retirement System [CSRS] or the Federal Employees' Retirement System [FERS] established by chapters 83 and 84 of title 5, United States Code, respectively; health

benefits under the Federal Employees Health Benefits program established by chapter 89 of title 5, United States Code; life insurance under the Federal Employees' Group Life Insurance program established by chapter 87 of title 5, United States Code; and savings under the Thrift Savings Plan [TSP] established by subchapter III of chapter 84 of title 5, United States Code.

The claimant's lump-sum annual leave payment did not include deductions for CSRS/FERS, health benefits, life insurance, or TSP savings, was properly subject to deductions for Federal and State taxes, Social Security, and Medicare, and thus was properly calculated at \$5,794.47 after these deductions.¹

Under CFR 550.1104(1), if an employee retires or resigns or if his or her employment ends before collection of a debt by salary offset is completed, the debt may be liquidated by deduction from subsequent payments of any nature, such as the final salary or lump-sum leave payments.

Salary overpayment calculation

The claimant contests the validity of the underlying debt to which DFAS applied the lump-sum annual leave payment. This debt derives from the period February 2003 to January 2005 when DFAS was erroneously issuing the claimant salary payments which he was either returning or reimbursing. The claimant believes that because he returned to DFAS the full net amount of the salary overpayments, his debt for these overpayments was fully discharged. To support his assertion that DFAS incorrectly calculated the salary overpayment, he provided a listing of ten disputed pay periods comparing his gross pay amounts indicated on the DFAS audit worksheets with the gross pay amounts on his corresponding LESs and the "unreconciled differences" between them. He states:

DFAS performed an "audit" using a gross calculation method which included incorrect gross pay amounts for many pay periods. None of the gross amounts on the DFAS worksheet (Attachment #3) from the pay period ending 10/4/2003 through 1/24/2004 agree with the gross amounts on my leave and earnings statement (LES) and overstate gross income by \$2,677.67. Since the DFAS worksheet grossly misstates the compensation amounts in many of the pay periods, it can be assumed the deduction offset amount of \$10,148.09 is also highly inaccurate (Attachment #3, page 2).

Most of the "unreconciled differences" asserted by the claimant match the sum of the deductions made for "debt, routine" in each of those pay periods, as indicated under "Deductions" on the LESs, and any retroactive earnings. The claimant acknowledges that "in the PPE 10/4/03, DFAS began to deduct amounts for debt repayment," coinciding with the commencement of and thus accounting for the "unreconciled differences." Further, while not labeled as "gross wages" on the LES, the claimant's "regular pay" under "Current Earnings" on the LESs match the "gross wages" and "regular wages" reported on the DFAS audit worksheets. Thus, the claimant's

¹ In subsequent correspondence to OPM, the claimant asserts the "calculation of the amount owed me, \$9,842.48, is still valid." Based on the above analysis, we would clarify that the amount in dispute, after deducting the \$1,386.51 refunded in 2008, is \$4407.96.

comparisons do not support his "assumption" that DFAS' "deduction offset amount of \$10,148.09" is inaccurate.²

The claimant additionally states that the paychecks for the pay periods ending August 20, 2005, January 7, 2006, and January 21, 2006, were never deposited by him but "are included in the DFAS Gross debt calculation and over state Gross Debt by \$9,444.00." However, the claimant acknowledges the DFAS audit summary includes the corresponding entries of "canc check" for those paychecks, thus cancelling them out for debt calculation purposes.

OPM settles pay and leave claims under the authority of 31 United States Code (U.S.C.) 3702(a)(2), the implementing regulations for which are contained in 5 CFR part 178. Section 178.105, Basis of claim settlements, states:

The burden is upon the claimant to establish the timeliness of the claim, the liability of the United States, and the claimant's right to payment. The settlement of claims is based upon the written record only, which will include the submissions by the claimant and the agency. OPM will accept the facts asserted by the agency, absent clear and convincing evidence to the contrary.

The claimant has provided no documentation that clearly establishes DFAS calculated his salary overpayment incorrectly. He provided only a spreadsheet with calculations based on the assertions addressed above, and acknowledged he was unable to produce copies of some of his LESs to provide a complete payroll record for the period in question. Therefore, the claimant has not met the burden of proof establishing his right to payment, and the claim is accordingly denied.

OPM's claim adjudication authority under 31 U.S.C. 3702(a)(2) is limited to deciding if the governing statutes and regulations have been properly interpreted and applied in determining the pay and/or benefits to which an employee is entitled. OPM does not perform auditing to determine if a payroll provider has calculated an employee's payroll deductions correctly, nor do we serve as intermediary between a claimant and payroll provider in the resolution of payroll processing disputes as the claimant appears to ask us do. As such, the claimant is responsible for contacting DFAS directly to obtain "support and documentation showing that they deposited money into my TSP account and I later withdrew it from my TSP," or any other records relevant to his concerns. Although we acknowledge the difficulty the claimant has reportedly encountered in communicating with DFAS, that agency is the appropriate source for a detailed explanation of their salary overpayment calculations. Likewise, OPM does not have jurisdiction over the corollary issues related to taxable income raised by the claimant, which are exclusively the province of the Internal Revenue Service. *See* OPM File Number 000687, August 4, 1999.

² Copies of the claimant's TSP Participant Transaction History Report obtained independently by OPM confirm that Government automatic and matching funds were credited to the claimant's TSP account for the pay periods in question, although DFAS did not indicate whether these amounts were included in the salary overpayment calculation.

The claimant raises a number of issues related to the debt collection process followed by DFAS, particularly his assertion that they failed to notify him of the debt in a timely fashion and before they began to make deductions for debt repayment. However, as noted above, OPM's claims adjudication authority is limited to consideration of whether money is owed to an employee and does not extend to determining whether an agency followed proper debt collection procedures.

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. *See* 5 CFR 178.105; *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. *See* 5 CFR 178.105; *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. *See* 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.

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