

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

Claimant: [name]

Organization: [agency component]
[installation]
Department of the Air Force
[city & State]

Claim: National Security Personnel System or
Chapter 45 performance award

Agency decision: Denied

OPM decision: Denied

OPM file number: 12-0013

/s/ Judith A. Davis for

Robert D. Hendler
Classification and Pay Claims
Program Manager
Agency Compliance and Evaluation
Merit System Accountability and Compliance

9/26/13

Date

The claimant is currently employed as a [GS-12] with the Department of the Air Force. He requests that the U.S. Office of Personnel Management (OPM) direct his employing agency to provide him with a National Security Personnel System (NSPS) payout “for the period of 21 Jan 2007 thru 30 September 2007 in the total amount of \$4,376.00, of which \$3,063 was due in a Salary [sic] increase and \$1,313.00 in Bonus [sic] payout.” Indicating he planned to retire from Federal service in September 2012, he states: “If I cannot be paid for the NSPS payout I was denied, I request that the salary amount be credited to my pay records retroactive to 6 Jan 2008 so my civilian pay used to compute my civilian retirement annuity accurately reflect what I should have received on that date.¹” OPM received the claim on November 30, 2011, and the agency administrative report on May 8, 2012. For the reasons discussed herein, the claim is denied.

The claimant states: “I feel this payment is due to me based on my performance at the time and it was denied me based on NSPS references that were not known by me nor by the supervisory chain and pay pool manager at the time.” Alternatively, he seeks payment under the “Title 5, USC [United States Code], Chapter 45 civilian award process” stating, “I feel that the payment of either was predicated on the performance I did during the 21 Jan-30 Sep 2007 time period...”

The agency states that during the period in question, the claimant worked in the Air Force Reserve Command (AFRC) in a [YC-02] position at [installation], transitioning into NSPS on January 21, 2007. The agency states that according to the claimant, he sought out and secured employment with a local unit at [installation], which belongs to the Air Force Materiel Command (AFMC). Upon moving to AFMC on December 23, 2007, he was reassigned to a General Schedule (GS) position and was no longer covered under NSPS.

The agency cites Department of Defense Instruction (DODI) 1400.25, SC1930.9.4.5., in effect during the period of the claim, which states:

Employees who are no longer covered by NSPS at the time of the payout are not entitled to a performance-based payout. However, such employees may be considered for incentive award actions under Chapter 45 of Reference (a) [chapter 45 of title 5, U.S.C.], if performance during the applicable period warrants recognition.

The agency states NSPS performance-based payouts for the performance year ending September 30, 2007, were effective January 6, 2008. Thus, the claimant was neither eligible for nor entitled to an NSPS performance-based payout since, upon his December 27, 2007, reassignment to a GS position, he was no longer covered by the NSPS and was precluded from receiving a performance-based payout under DODI 1400.25-M, SC1930.9.4.5.

The agency also states awards under chapter 45 of title 5, United States Code (U.S.C.), are covered by Air Force Instruction (AFI) 36-1004. Under AFI 36-1004, Paragraph 3.3, “An employee’s supervisor or any individual having direct knowledge of the act, service, scientific or other achievement; in coordination with employee’s supervisor; may initiate an award

¹ Disputes regarding the calculation of Federal benefits are not subject to review under the compensation and leave claim provisions of 31 U.S.C. § 3702(a)(2). See chapters 83 and 84 of title 5, U.S.C.

nomination.” The agency asserts the granting of an award under chapter 45 of title 5, U.S.C., is discretionary, and that the claimant’s AFRC supervisor declined to grant such an award.

The authority in section 31 U.S.C. § 3702(a)(2) is narrow and limited to the adjudication of compensation and leave claims. OPM’s claims adjudication authority is limited to reviewing whether the amount of funds expended incident to an agency’s performance management decision is appropriate. Section 9901.342 of title 5, U.S.C., covering performance payouts in effect during the period of the claim, provided for the issuance of implementing instructions for managing the performance-based pay scheme authorized under 5 U.S.C. § 9902(b)(7)(I). DoD regulations issued under 5 U.S.C. § 9902(b)(7)(I), and in effect during the period of the claim (DODI 1400.25-M, SC1930.9.4.5.), prohibited the claimant from receiving the NSPS performance-based payout he seeks. Therefore, we must deny this portion of the claim as contrary to controlling regulation.

Under 5 U.S.C. § 4503, “the head of an agency may pay a cash award to, and incur necessary expense for the honorary recognition of, an employee...” Thus, as the plain and unambiguous language of the statute makes clear, the granting of a performance award under 5 U.S.C. § 4503 is at the sole discretion of the agency and, as discussed previously, OPM’s jurisdiction does not extend to determining whether an agency’s performance management decision to grant or not grant a discretionary award is appropriate. Therefore, we must deny the claimant’s request for a performance award under 5 U.S.C. § 4503 for failure to state a claim upon which relief can be granted.

The claimant asserts failure of his agency to pay him either under NSPS or the incentive awards program under chapter 45 of title 5, U.S.C., was “in retaliation of [sic] [his] not accepting the ART [Air Reserve Technician] Officer movement to Pittsburgh and returning to the regular civil service....” The claims jurisdiction of OPM under section 3702(a)(2) of title 5, U.S.C., is limited to consideration of statutory and regulatory liability. OPM has no authority to authorize payment based on consideration of equity or motivation. Therefore, the claimant’s assertion he has not been treated fairly has neither merit nor applicability to our claim settlement determination.

OPM does not conduct investigations or adversary hearings in adjudicating claims, but relies on the written record presented by the parties. See *Frank A. Barone*, B-229439, May 25, 1988. Where the record presents an irreconcilable factual dispute, the burden of proof is on the claimant to establish the liability of the United States. 5 CFR 178.105; *Jones and Short*, B-205282, June 15, 1982. Where the agency’s determination is reasonable, we will not substitute our judgment for that of the agency. See, e.g., *Jimmie D. Brewer*, B-205452, Mar. 15, 1982, as cited in *Philip M. Brey*, B-261517, December 26, 1995. The claimant has failed to establish that the agency acted in an unlawful manner when it declined to provide him an NSPS performance-based payout or an award under 5 U.S.C. § 4503. Therefore, the claim is denied.

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.