

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

Claimant: [name]

Organization: Patient Care Services
Veterans Affairs Medical Center
Veterans Health Administration
Department of Veterans Affairs
[city & State]

Claim: Request for waiver of dual
compensation indebtedness

Agency decision: N/A

OPM decision: Denied; Lack of jurisdiction

OPM file number: 12-0030

//Judith A. Davis for

Robert D. Hendler
Classification and Pay Claims
Program Manager
Merit System Audit and Compliance

1/31/2013

Date

The claimant was formerly employed by the Department of Veterans Affairs (VA) in [city & State]. In her June 4, 2012, letter received by the U.S. Office of Personnel Management (OPM) on June 8, 2012, the claimant seeks to obtain a waiver of indebtedness incurred from dual compensation payments (full salary and annuity) received after a salary offset waiver approved by her agency had expired. She requests waiver of indebtedness for the salary offset she received during the 2010 and 2011 tax years. We received additional information from her employing agency on October 4, 2012. For the reasons discussed herein, the claim is denied.

The claimant returned to Federal service on June 7, 2009, as a reemployed annuitant on a temporary appointment not to exceed June 6, 2010. The Remarks section of a June 7, 2009, Notification of Personnel Action, Standard Form 50, submitted by the claimant shows a salary offset waiver was approved on October 28, 2008, not to exceed one year. She states she “was not working from November 2009 until February 2010” and did not receive any other notices about her compensation until she received a letter dated August 13, 2011, from her payroll provider, the Defense Finance and Accounting Service (DFAS), informing her of her debt. This debt was assessed by DFAS at \$7,960.79 for the 2010 and 2011 tax years. The claimant states she “had no way of knowing her salary was incorrect.”

As a result of legislative and executive action, the authority to waive overpayments of pay and allowances now resides with the heads of agencies, regardless of the amount. *See* the General Accounting Office Act of 1996, Pub. L. No. 104-316, 110 Stat. 3826, approved October 19, 1996; and the Office of Management and Budget (OMB) Determination Order dated December 17, 1996. Neither Pub. L. No. 104-316 nor OMB’s Determination Order of December 17, 1996, authorizes OPM to make or review another agency’s waiver determination involving erroneous payments of pay or allowances. Therefore, OPM does not have jurisdiction to consider, or issue a decision on, the request for a waiver of the claimant’s indebtedness to the United States.

To the extent the claimant seeks to assert she was not overpaid and thus is not indebted to the Government, we note OPM has authority to adjudicate compensation and leave claims for Federal employees under the provisions of section 3702(a)(2) of title 31, United States Code (U.S.C.). OPM’s adjudication authority is an administrative remedy, not a judicial remedy. *See* 5 Code of Federal Regulations (CFR), part 178. Section 7121(a)(1) of title 5, U. S. C., which directs that except as provided elsewhere in the statute, the grievance procedures in a negotiated collective bargaining agreement (CBA) shall be the exclusive administrative remedy for resolving matters that fall within the coverage of the CBA. The Court of Appeals for the Federal Circuit has found the plain language of 5 U.S.C. § 7121(a)(1) to be clear and as such, limits the administrative resolution of a Federal employee’s grievance to the negotiated procedures set forth in the CBA. *Mudge v. United States*, 308 F.3d 1220, 1228 (Fed. Cir. 2002). Further, the Federal Circuit also found that all matters not specifically excluded from the grievance process by the CBA fall within the coverage of the CBA. *Id. at 1231*. As such, OPM cannot assert jurisdiction over the compensation or leave claims of Federal employees who are or were subject to a negotiated grievance procedure (NGP) under a CBA between the employee’s agency and labor union for any time during the claim period, unless the matter is or was specifically excluded from the CBA’s NGP. *See* 5 CFR 178.101(b).

The Master Agreements between the Department of Veterans Affairs and the American Federation of Government Employees covering the claimant during her employment with the VA, and in effect during the period of the claim, do not specifically exclude compensation issues of overpayment from the NGP (Article 42 in the CBA in effect in 2009 and Article 43 in the CBA effective March 2011). Therefore, any claim relating to whether she was properly paid must be construed as covered by the NGPs the claimant was subject to during the claim period and OPM would have no jurisdiction to adjudicate such claim.

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.