

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

Claimant: [name]

Organization: [office]
[medical center]
U.S. Department of Veterans Affairs
[city & State]

Claim: Back pay for performing higher
graded work

Agency decision: N/A

OPM decision: Denied; Lack of Jurisdiction

OPM file number: 13-0006

/s/ Judith A. Davis for

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

6/24/13

Date

The claimant is currently assigned to a Registered Nurse (Mgr/Head Nurse), 0610-III, Functional Statement (FS) as the Facility Telehealth Coordinator with the U.S. Department of Veterans Affairs (VA) Medical Center in [city & State]. She states she accepted the position on September 25, 2011, and seeks Nurse Manager Pay, including retroactive pay, for that position. OPM received the request on January 10, 2013. For the reasons discussed herein, the claim is denied for lack of jurisdiction.

The claimant states she supervises nine full-time telehealth clinical technicians who are responsible for performing direct patient care/nursing duties she states were previously performed by licensed practical nurses (LPN). She states:

I am basically being told that I am denied nurse manager pay because the health technicians do not have the title LPN or nurse assistant. I find this very difficult to understand because I am supervising 9 full time health technicians who are working in nursing positions providing direct patient care nursing services. If I was supervising 3 employees with the title nursing assistant or LPN providing these same services, I could be paid on the nurse manager's pay scale. It is my understanding that health technicians are nursing assistants who are clinically trained to provide a higher level of patient care.

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 (U.S.C.). Section 178.102(a)(3) of 5 CFR requires an employing agency to have already reviewed and issued an initial decision on a claim before it is submitted to OPM for adjudication. Based on the information submitted, although we find the claimant has filed a signed, written request to her local human resources (HR) office on this matter and has received emails from agency headquarters HR staff, we find no written agency-level claim denial as required by statute and regulation (31 U.S.C. § 3702(b)(1)) and 5 CFR 178.102(a)). However, we may render a decision on this matter based on jurisdictional grounds.

The claimant seeks to have the Functional Statement to which she is assigned, which is used to determine her salary, identified and treated as a "Head Nurse [Nurse Manager]" and, therefore, receive "Head Nurse [Nurse Manager]" pay as provided in VA Handbook 5007/34, Part II, Chapter 8 (January 7, 2009). Her rationale for such treatment is that the health technicians she supervises should be credited in this process as meeting the requirement that "[a]t least two of the patient care team members must be in a licensed nursing position (i.e., registered nurse, licensed practical nurse, nursing assistant)."

VA nurses appointed under the provisions of 38 U.S.C. § 7401(1) are placed in pay grades under the provisions of 38 U.S.C. § 7404(b). VA Handbook 5005, Part I, Section 3.b., indicates employees appointed under these provisions are placed in positions documented by functional statements. VA's Human Resources Management Letter No. 05-08-05, Guidance for the Preparation of Title 38 Functional Statements (March 17, 2008), states: "A functional statement is an official statement of the major duties and responsibilities assigned by management to a position." As discussed in VA Handbook, Part II, Chapter 3.b.:

Grade Level Determinations. The grade to which an applicant is appointed will be determined by the individual's qualifications and [] assignment. [Under the Title 38 "rank-

in-person” system, candidates are to be appointed at the highest grade or level within the grade for which they are fully qualified up to the full performance level. For positions above the full-performance (journey level) the complexity of the assignment and scope of responsibility are considered in determining grades.]

Thus, assignment to a functional statement is part of a combined staffing (qualifications determination) and classification (grade level determination) process. The scope of OPM’s authority under 31 U.S.C. § 3702 is narrow and does not include intervening in the title 38 staffing and classification process by determining whether the claimant’s subordinate staff positions qualify her for designation and treatment as a “Head Nurse [Nurse Manager].” This determination would be necessary for OPM to render a decision on the merits of the claimant’s underlying compensation claim; i.e., whether she qualifies for “Head Nurse [Nurse Manager]” pay. Accordingly, OPM lacks jurisdiction to adjudicate the claimant’s pay claim. This decision is consistent with previous claim decisions issued by OPM and the General Accounting Office, now the Government Accountability Office, the agency formerly charged with settling compensation and leave claims under § 3702(a)(2), which found 31 U.S.C. § 3702(a)(2) does not provide a jurisdictional basis for deciding position classification appeals and does not consider such appeals within the context of the claims adjudication function performed under § 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); OPM File Number 01-0016, April 19, 2001; OPM File Number 01-0045, January 7, 2002.

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.