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

Claimant: [name]

Organization: Federal Deposit Insurance Corporation

Portland, Oregon

Claim: Overpayment of locality pay

Agency decision: N/A

OPM decision: Denied; Lack of jurisdiction

OPM file number: 14-0023

/s/ Linda Kazinetz for_____

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

6/5/14

Date

The claimant seeks to file a pay claim concerning the Compliance Examiner position he occupied during his one-year probation with the Federal Deposit Insurance Corporation (FDIC) in Portland, Oregon. He does not dispute that he was improperly paid Seattle, Washington, locality pay during this time period, but seeks to dispute FDIC's collection of the overpayment with three percent interest. Specifically, he seeks "to have the overpayment reimbursed, using the standard IRS daily compounding interest rate." We received the claim on January 23, 2014, and information from the FDIC on March 13, 2014. For the reasons discussed herein, the claim is denied.

OPM has authority to adjudicate compensation and leave claims for many Federal employees under the provisions of section 3702(a)(2) of title 31, United States Code (U.S.C.). However, section 178.102(a) of title 5, Code of Federal Regulations (CFR), indicates that the claimant's employing agency must review and issue a written decision on a compensation claim before it is submitted to OPM for adjudication. The claimant is responsible for preserving the claim period by proving the signed, written claim was filed within the applicable statute of limitations. *See* 5 CFR 178.104. The information provided by the claimant with his request does not show he has filed a signed, written claim with the FDIC component authorized to issue an agency-level decision or that he has received such a decision. Nevertheless, we may render a decision on this claim in its entirety based on lack of jurisdiction.

Section 7121(a)(1) of title 5, U. S. C., 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 CBA between the FDIC and the National Treasury Employees Union covering the claimant during the period of the claim does not specifically exclude compensation issues from the NGP (Article 47). Therefore, this claim must be construed as covered by the NGP the claimant was subject to during the claim period, and OPM has no jurisdiction to adjudicate this claim. The claimant provided a copy of Notification of Personnel Action, Standard Form 50, showing he left employment with the FDIC on July 30, 2011. As is clear in *Muniz v. United States*, 972 F.2d 1304 (Fed. Cir. 1992), the fact that the claimant is no longer employed by the FDIC does not remove the Civil Service Reform Act's jurisdictional bar for claims covered by the CBA arbitration and grievance procedures that arose during and from his employment with the FDIC.

Although presented as a request for reimbursement of money deducted from his pay, this claim is more properly construed as the claimant's seeking intervention by OPM regarding the FDIC's

decision to not waive the salary overpayment and its decision to force repayment with interest. As a result of legislative and executive action, the authority to waive overpayment of pay and allowances now resides with the heads of agencies, regardless of the amount. See 5 U.S.C. § 5584. Neither the General Accounting Office Act of 1996, Pub. L. No. 104-316, 110 Stat. 3826, approved October 19, 1996, nor the Office of Management and Budget's Determination Order dated December 17, 1996, authorizes OPM to make or to review waiver determinations involving erroneous payments of pay or allowances under the provisions of 31 U.S.C. § 3702(a)(2). Therefore, OPM does not have jurisdiction to consider, or issue a decision on, a request for a waiver of a claimant's indebtedness to the United States. Because the issue of waiving the claimant's indebtedness is vested in the FDIC, this aspect of the claim must also be denied for lack of jurisdiction.

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.