

Leave Claim Decision
Under section 3702 of title 31, United States Code

Claimant: [name]

Organization: U.S. Postal Service

Claim: Retaliation claim-Family and Medical
Leave Act (FMLA)

Agency decision: N/A

OPM decision: Denied; Lack of jurisdiction

OPM file number: 10-0011

//Judith A. Davis for

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

5/4/10

Date

In his October 20, 2009, claim request letter to the U.S. Office of Personnel Management's (OPM) Center for Pay and Leave Administration (CPLA), the claimant's representative (duly designated in writing on December 1, 2009) states the claimant was forced to resign employment with the U.S. Postal Service (USPS) on July 8, 2009, after "suffering severe emotional distress caused by the conduct of the USPS and its employees." The claimant's representative states the claimant "submitted his FMLA certification" to USPS in late October 2008, and was seeking intermittent leave for treatment of Post Traumatic Stress Disorder. The claimant's representative states the actions subsequently taken by the claimant's immediate supervisors and the USPS constitute "unlawful FMLA retaliation in violation of 5 U.S.C. § 6385 and 5 U.S.C. § 2302" and asks OPM consider the October 20, 2009, letter to be the claimant's "submission of his claim for FMLA retaliation as required by 5 C.F.R. [sic] § 178." CPLA referred this claim to OPM's Center for Merit System Accountability, now Merit System Audit and Compliance, for review and response on November 4, 2009. For the reasons discussed herein, OPM does not have jurisdiction to adjudicate this claim.

OPM does not have any authority to investigate or settle claims made against an agency which has independent settlement authority under the law. The applicable law in this case, section 2008(c) of title 39, United States Code (U.S.C.), states:

subject only to the provisions of this chapter, the Postal Service is authorized to make such expenditures and to enter into such contracts, agreements, and arrangements, upon such terms and conditions and in such manner as it deems necessary, including the final settlement of all claims and litigation by or against the Postal Service.

Because the USPS has statutory authority to consider and settle all claims made against it, OPM does not have the authority to consider or settle this claim.

Although we do not have authority to settle this claim, we note OPM administers Title II of FMLA for Federal civilian employees as defined in 5 U.S.C. § 6381(1) which states:

- (1) the term "employee" means any individual who--
 - (A) is an "employee", as defined by section 6301(2), including any individual employed in a position referred to in clause (v) or (ix) of section 6301(2), but excluding any individual employed by the government of the District of Columbia, any individual employed on a temporary or intermittent basis, and any employee of the Government Accountability Office or the Library of Congress; and
 - (B) has completed at least 12 months of service as an employee (within the meaning of subparagraph (A));

Section 6301(2) states:

- (2) "employee" means--
 - (A) an employee as defined by section 2105 of this title;
 - and
 - (B) an individual first employed by the government of the

District of Columbia before October 1, 1987;

Section 2105 (e) states: “Except as otherwise provided by law, an employee of the United States Postal Service...is deemed not an employee for purposes of this title.” Thus, USPS employees do not meet the definition of “employee” for purposes of Title II of FMLA. Instead, USPS employees are covered by Title I of FMLA and fall under the jurisdiction of the U.S. Department of Labor. As discussed in 29 CFR:

825.109-- Federal agency coverage:

(b) The Federal Executive Branch employees within the jurisdiction of this part 825 include:

(1) Employees of the Postal Service;

We also note, under 5 U.S.C. § 1212(a), the U.S. Office of Special Counsel receives and investigates allegations of prohibited personnel practices defined in 5 U.S.C. § 2302. Thus, OPM also lacks subject matter jurisdiction over this 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.