

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

Claimant: [name]

Organization: U.S. Geological Survey
U.S. Department of the Interior

Claim: Correction of classification and
compensation; reduction in pay and rank

Agency decision: N/A

OPM decision: Denied; Barred by res judicata and lack
of subject-matter jurisdiction

OPM decision number: 11-0025

//Judith A. Davis for

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

11/15/2011

Date

The claimant formerly worked for the U.S. Geological Survey (USGS), U.S. Department of the Interior, in a number of Federal civilian positions until his retirement from Federal service on August 31, 1982. In a series of letters to the U.S. Office of Personnel Management (OPM) beginning on or about May 22, 2011, the claimant has asked, inter alia, for the U.S. Office of Personnel Management's assistance in his "appeal" which began in the 1960's concerning what he describes as a loss of rank and compensation, his "loan" from his employing office in his agency to another office, correction of the classification of his position, and failure of his agency to follow required procedures. Due to the nature of the subject-matter of these letters, we have accepted this request under the compensation and leave claim provisions of 31 U.S.C. § 3702. For the reasons discussed herein, the claim is barred by res judicata and denied for lack of subject-matter jurisdiction.

Information submitted by the claimant include a copy of his December 25, 1978, letter to the former U.S. Civil Service Commission's (CSC) Office of the Commissioners, with the subject: "Attempt in "due process" to correct my career records, adverse action (Vets. Pref. Sec. 14) and position class appeals and not having a proper certified job description (deadend [sic] job) since 1967." However, the claimant neglected to include a copy of GAO's March 20, 1975, decision, B-181319, responding to the claimant's appeal of the September 25, 1972, GAO Transportation and Claims Division's denial of his claim concerning the issues the claimant now seeks to bring before OPM, which provides:

Part-time use of an employee's services by another agency division for 4 years and the employee's subsequent loss of compensation due to placing him in GS-7 step G, under the "highest previous rate" rule incident to his reassignment at a time when the Classification Act pay structure had 7 scheduled steps and 3 longevity steps do not entitle employee to additional compensation since there is no finding under 5 U.S.C. 5596 that he underwent an unjustified personnel action, his agency found him properly classified, and the "highest previous rate" rule was properly applied.

The March 20, 1975, decision states from July 1958 to June 1962, the claimant was employed as a scientific illustrator in the [agency component], USGS, but was called upon to perform work for the Foreign Hydrology Section (FHS) of the Water Resources Division (WRD). During this period, the claimant worked an average of two days per week at BTI and three days at FHS. On June 15, 1962, a request was made to transfer the claimant from PD to WRD at his then current rate of pay (GS-7, Step F, \$6,180 per annum). The decision states that rather than process this personnel action immediately, the reassignment was delayed in order to give the claimant the benefit of the increase in compensation he would realize due to the Civil Service Commission's ordered conversion of his job from the Classification Act to a Wage Board position. This pay system change, on July 22, 1962, converted the claimant from GS-7, Step F (\$6,180 per annum) to WB-16 (\$3.22 per hour, \$6698 per annum).

The decision states records show on August 5, 1962, the claimant was returned to a Classification Act position at his own request:

This is to request that I be assigned from my present position (Negative Engraver, WB-16, \$3.22 per hour) in the [agency component] to the position of Cartographic Technician

(General) GS-1371-7, \$6345 per annum, in the Publications Section, Water Resources Division.

The decision states the claimant was promoted on March 15, 1964, to GS-9 based on the assumption of greater job responsibilities and difficulties, and received no further promotions. He subsequently alleged his position was misclassified at GS-9 rather than the GS-11 level and filed a grievance with USGS. When the grievance was not settled to his satisfaction, the claimant filed a claim for retroactive adjustment of compensation. His claim was denied by GAO on the grounds that USGS determined his position was properly classified, employees are only entitled to the compensation of the position to which appointed, and upon questions of fact between a claimant and his agency, the rule of GAO “is to accept the statement of facts furnished by the administrative agency in the absence of evidence sufficient to overcome the presumption of the correctness thereof.”

The decision states the claimant appealed the denial of his claim for back pay:

...basically for the following reasons: (1) He believes that during the period 1958 to 1962 when he worked on a loan basis to FHS he lost seniority and the opportunity for promotion in his official positions, and (2) he believes that his loss of Wage Board classification when he was reassigned to the Water Resources Division as a Cartographic Technician, Grade 7, Step G, with the attendant reduction in compensation was a loss of rank not handled in accordance with the controlling adverse action regulations. Because [the claimant] considers these two matters to have constituted unjustified personnel actions, he has made his claim for back pay under 5 U.S.C. Sec. 5596 (1970).

The decision states since there has been no finding that the claimant had undergone an unjustified or unwarranted personnel action, there is no improper action to correct:

Moreover, the classification of a position is primarily a function of the agency and of the Civil Service Commission (CSC) on appeal; and [the claimant's] agency has held that [the claimant's] position was properly classified. Therefore, there is no basis for our office to allow back pay under the provisions of 5 U.S.C. Sec. 5596.

With regard to the “loan” of the claimant’s services from 1958 to 1962, GAO accepted USGS’ determination that his “loan” was a job “mix” and not a true detail. Responding to the claimant’s assertions that this “loan” deprived the claimant of promotional consideration, GAO stated the promotion of an employee is a matter of agency discretion, an employee does not have a legal right to a promotion, and concluded the “4 year job ‘mix’” did not provide a basis to award the claimant back pay. The decision stated the claimant “was counseled as to the loss of compensation that would occur upon his reassignment and there appears in the record a request by him dated August 3, 1962, that he be reassigned [from the previously described Wage Board to the Classification Act Cartographic Technician, GS-7, position]” and found the claimant’s pay was properly set based on the “highest previous rate” rule. The decision states:

In our view, this statement established his awareness of his loss in compensation upon reassignment and the voluntariness of the reassignment on [the claimant's] part. In light

of the foregoing it appears that the manner in which [the claimant's] reassignment was handled did not constitute an adverse action.

As discussed in *Stearn v. Department of the Navy*, 280 F.3d 1376 (Fed. Cir 2002):

Under the doctrine of res judicata, a final judgment on the merits of an action precludes the parties from relitigating issues that were or could have been raised in that action. *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 398, 69 L. Ed. 2d 103, 101 S. Ct. 2423 (1981)...The doctrine serves to "relieve parties of the cost and vexation of multiple law suits, conserve judicial resources, and...encourage reliance on adjudication." *Allen v. McCurry*, 449 U.S. 90, 94, 66 L.Ed. 2d308, 101 S.Ct. 411 (1980).

The authority to adjudicate and settle Federal civilian employee claims for compensation and leave under the authority of 31 U.S.C. § 3702(a)(2) was transferred from GAO to OPM as a result of legislative and executive action. 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. The claimant's attempt to revive his claim before OPM is misplaced. Since GAO has already rendered a judgment on the merits of the issues the claimant seeks to bring before us falling under the jurisdiction of 31 U.S.C. § 3702(a)(2), the claim before us is barred by res judicata.

Even though 5 U.S.C. § 5112 authorizes OPM to decide position classification appeals, OPM's authority to adjudicate compensation and leave claims arises from a different law -- 31 U.S.C. § 3702. OPM's authority under 31 U.S.C. § 3702 is narrow and does not include any authority to decide position classification or job grading appeals. Therefore, OPM may not rely on 31 U.S.C. § 3702 as a jurisdictional basis for deciding position classification appeals and does not consider such appeals within the context of the claims adjudication function it performs under section 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, 2002.¹

¹ Although OPM does not have authority to adjudicate classification appeals under the authority of 31 U.S.C. § 3702, we note that the clear and unambiguous language of 5 U.S.C. 5112(b) requires OPM to adjudicate appeals under the provisions of subsection (a) of 5 U.S.C. 5112. This subsection requires OPM "ascertain currently the facts as to the duties, responsibilities, and qualification requirements of a position." This statutory requirement is reiterated in section 5 CFR 511.607(a)(1) and cannot be met if the requesting employee no longer performs the work of the position he or she wishes to appeal. Therefore, the claimant's apparent request to challenge the classification with OPM of a position he no longer occupies is barred by controlling statute and regulations.

As the claimant acknowledges himself in his December 25, 1978, letter to CSC's Office of the Commissioner, effective January 1, 1979, the authority to hear adverse action appeals was transferred to the newly created Merit Systems Protection Board. Therefore, the claimant's attempt to seek redress before us regarding what he describes as adverse actions must be denied for lack of subject-matter 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.