

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

Claimant: [name]

Organization: Farm Services Agency County Office
U.S. Department of Agriculture
[city & State]

Claim: Request for higher grade

Agency decision: N/A

OPM decision: Dismissed; Lack of subject-matter
jurisdiction

OPM file number: 13-0055

/s/ Linda Kazinetz for

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

11/14/13

Date

On November 6, 2012, the U.S. Office of Personnel Management (OPM) received the claimant's request for a higher grade. The claimant is employed in a Program Technician, CO-1101-5, position in the U.S. Department of Agriculture's (USDA) Farm Service Agency (FSA) County Office, in [city & State]. For the reasons discussed herein, the claim is dismissed because it does not fall within the claims adjudication authority of OPM.

The claimant seeks to challenge the grade and step to which the FSA appointed her, effective August 28, 2011, stating, inter alia, "...I feel that I was wronged during the hiring process, and my background and experience was not accounted for in the way it should have been." She further states "I would like this to be corrected and my salary set at the appropriate Grade/Step with retroactive pay."

Section 3702(a)(2) of title 31, United States Code (U.S.C.), limits OPM's claims adjudication authority to "claims involving Federal civilian employees' compensation and leave." Title 31 does not define "Federal civilian employee" in association with the claims adjudication authority it grants to OPM in § 3702(a)(2). Title 5, U.S.C., however, concerns government organization and employees, and 5 U.S.C. § 2105 defines the term "employee" for the purposes of that title.

In relevant part, section 2105(a)(1) reads:

- (a) For the purpose of this title, "employee", except as otherwise provided by this section or when specifically modified, means an officer and an individual who is—
 - (1) appointed in the civil service by one of the following acting in an official capacity—
 - (A) the President;
 - (B) a Member or Members of Congress, or the Congress;
 - (C) a member of a uniformed service;
 - (D) an individual who is an employee under this section;
 - (E) the head of a Government controlled corporation; or
 - (F) an adjutant general designated by the Secretary concerned under section 709 (c) of title 32;

The claimant is an FSA County Office employee hired under the authorities found in section 7.1 of title 7, Code of Federal Regulations (CFR), et seq. She was appointed to her position by an elected county committee (CC) and serves at the pleasure of the CC. The CC itself is an elected body authorized by 7 CFR 7.11 and is composed entirely of elected officials who are not permitted to be USDA employees during their term of office pursuant to 7 CFR 7.18. Accordingly, the claimant does not satisfy 5 U.S.C. § 2105(a)(1) because the members of the CC are not employees under 5 U.S.C. § 2105(a)(1)(D) and therefore, the claimant cannot be a Federal employee under 5 U.S.C. § 2105 as a matter of law. *Hedman v. Department of Agric.*, 915 F.2d 1552,1554 (Fed.Cir.1990); *see also Hamlet v. United States*, 63 F. 3d 1097 (Fed. Cir. 1995).

Further, county positions are not included in the definition of "civil service" under 5 U.S.C. § 2101: (1) the "civil service" consists of all appointive positions in the executive, judicial and legislative branches of the Government of the United States, except positions in the uniformed service." As county positions are elected, not appointive, positions in the executive branch, county employees are not employees as defined in 5 U.S.C. § 2105, and Congress has not taken

any action to define county employees as “Federal civilian employees” under 31 U.S.C. § 3702(a)(2). We find the claimant, as a county employee, is not a “Federal civilian employee” for purposes of 31 U.S.C. § 3702(a)(2). Accordingly, this claim is dismissed because OPM does not have the authority to consider it.

OPM’s authority under 31 U.S.C. § 3702 is narrow and limited to adjudication of compensation and leave claims. OPM’s authority under 31 U.S.C. § 3702(a)(2) does not extend to disputes over qualification determinations or other appointment and placement actions made by agencies. Therefore, OPM does not consider such appeals within the context of the claims adjudication function it performs under 31 U.S.C. § 3702. *See* OPM file number 07-0052, December 22, 2008.

OPM has the authority to review the classification of a position at an employee’s request under chapter 51 of title 5, U.S.C. However this applies only to an “employee” as defined in 5 U.S.C. 5102(a)(2): “an individual employed in or under an agency” whose position is covered by the provisions of that chapter. The claimant is not an “employee” of an “agency” (USDA) as defined in 5 U.S.C. § 5102(a)(1) in that she is, as discussed previously, an employee of a county committee. Thus, classification of the claimant’s position is not subject to OPM’s classification appeals authority contained in chapter 51 of title 5. *See* 5 U.S.C. 5112, 5107.

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.