

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

Claimant: [name]

Organization: [agency component]
U.S. Department of Veterans Affairs
(VA)
[city & State]

Claim: Waiver of indebtedness for
recruitment incentive

Agency decision: Denied

OPM decision: Denied; Lack of jurisdiction

OPM file number: 10-0044

//Judith A. Davis for

Robert D. Hendler
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Program Manager
Center for Merit System Accountability

11/3/2010

Date

In his June 23, 2010, letter received by the U.S. Office of Personnel Management (OPM) on July 2, 2010, the claimant seeks assistance with a waiver of repayment regarding a recruitment incentive. The claimant formerly occupied a Human Resources Specialist (Information Systems), GS-201-9, position in [agency component], VA, in [city & State]. For the reasons discussed herein, the claim is denied for lack of jurisdiction.

The claimant signed a service agreement to complete one year of service from the date of his entry on duty in order to receive a recruitment incentive. The claimant states he resigned from employment on November 12, 2008, prior to completing his service agreement due to health reasons. He states that when notified by VA of its intent to “collect the [incentive], [he] filed a request for forgiveness due to hardship.” The claimant states he received a letter denying his request for waiver on March 10, 2009, and wrote a letter asking for a means test since his sole source of income was social security disability, to which he received no response. He states that on November 24, 2009, wrote a letter of complaint to the Director, [agency component], complaining the Fiscal Service failed to follow written procedures by not responding to his request for a hearing.

The provisions of 31 U.S.C. § 3702(a)(2) are intended to provide recourse to challenge Federal agency decisions regarding entitlement to compensation. As discussed in the General Accounting Office’s *Principles of Federal Appropriation Law, Second Edition, Volume III, November 1994 (Redbook)* regarding the filing of a claim:

While a simple letter format will generally do the job, it must be clear that a claim is being asserted. The receiving agency should not be expected to engage in interpretation to divine the letter’s intent. A letter making an inquiry or requesting information is not sufficient. B-150008, October 12, 1962.

As defined in *West’s Encyclopedia of American Law*, edition 2, (2008): “A claim is something one party owes another....A claim also means an interest in, as in a possessory claim, or a right to possession.” As defined in *A Law Dictionary, Adapted to the Constitution and Laws of the United States* (John Bouvier, 1856): “A claim is a challenge of the ownership of a thing which a man has not in possession, and is wrongfully withheld by another.”

The claimant does not challenge the validity of the overpayment. Instead, the claimant has requested a waiver of his indebtedness for the acknowledged overpayment.¹ As a result of legislative and executive action, the authority to waive overpayments of pay and allowances now resides with the heads of agencies in which the debt accrued, regardless of the amount. 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. Neither Pub. L. No 104-316 nor OMB’s Determination Order of December 17, 1996, authorizes OPM to make or to review waiver determinations for another agency’s employees involving erroneous payments of pay or allowances. Therefore, OPM does not have jurisdiction to consider, or issue a decision regarding the denial of, a request for a waiver of

¹ It is unclear why [agency component’s] January 8, 2009, memorandum denying the waiver request cites the general waiver authority in U.S.C. 5584 since the waiver authority for recruitment incentives in 5 U.S.C. 5753(g) has been delegated to agencies under 5 CFR 575.111(h).

claimant's indebtedness to the United States. Therefore, review of factors offered in support of granting a waiver is an action outside the scope of OPM's claims settlement authority. OPM also does not have jurisdiction to issue a decision regarding the agency's non-response to the claimant's request for a hearing to dispute the amount of the payroll deduction. Accordingly, the claim must 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.