

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

Claimant: [name]

Organization: Department of the Navy

Claim: Overtime compensation while being held
as prisoner of war

Agency decision: N/A

OPM decision: Denied; Barred by res judicata

OPM decision number: 10-0025

//s// Judith A. Davis for

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

8/16/11

Date

The claimant formerly occupied a [position] with the Department of the Navy, in DaNang, Vietnam. He seeks to file a claim for additional overtime compensation for the period from February 1, 1968, to March 27, 1973, when he was interned by hostile forces in Vietnam in accordance with the provisions of the Missing Persons Act, 5 U.S.C. § 5561. The U.S. Office of Personnel Management (OPM) received the claim on April 6, 2010. For the reasons discussed herein, the claim is denied for lack of jurisdiction.

Information submitted by the claimant includes a December 29, 1977, memorandum from the Director of Civilian Personnel, Department of the Navy, to the Commanding Officer, Navy Regional Finance Center, in Washington, D.C., responding to a November 28, 1977, letter (copy not provided) seeking information on a claim for overtime pay submitted by the claimant. The memorandum indicates that during the period of his internment, in addition to his pay for non-overtime work, he continued to receive 25 percent annual premium pay for overtime, night, holiday, and Sunday work. The rate of premium pay was based on the tour of duty at DaNang of 168 hours per pay period, and was paid in lieu of separately computed overtime, night, holiday, and Sunday pay. The memorandum concluded that the claimant had already received the full amount of overtime compensation he would have received had he not been a prisoner of war and recommended that the claim be disallowed. The claimant identified this memorandum as his agency's claim denial.

The claimant also provided a copy of his July 1, 1977, claim request to the Claims Division of the U.S. General Accounting Office (now the Government Accountability Office (GAO)), and a copy of the Comptroller General decision identified as *In the Matter of Lawrence J. Stark*, B-183107, August 12, 1975, which permitted overtime compensation received for time spent as a prisoner of war to be based on the amount received prior to missing status if such compensation was a part of the regularly scheduled pay and allowances. However, the claimant neglected to include a copy of GAO's April 15, 1981, decision, B-200639, adjudicating the claimant's July 1, 1977 claim. This decision fully considered B-183107, and stated:

[Claimant] later filed a claim with our Office for additional overtime compensation covering the time of his internment between 1968 and 1973, based on overtime work performed during his off-duty shifts prior to his capture in February 1968. He indicated he was prompted to file the claim after learning of our ruling in *Matter of Lawrence J. Stark*, 54 Comp. Gen. 934 (1975) and 55 Comp. Gen. 147 (1975), in which we concluded that another Navy employee held captive in Vietnam was eligible for continued overtime compensation during the period of his captivity. As mentioned, however, our Claims Division denied [claimant's] claim. The denial was based upon an administrative report submitted by the Department of the Navy indicating that prior to [claimant's] capture in February 1968, he had been paid premium pay for regularly scheduled standby duty during his 168-hour per pay period basic work schedule under the authority of 5 U.S.C. 5545(c)(1), and that he had, therefore, been ineligible for separately computed regular overtime compensation for overtime work performed outside that schedule.

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 additional overtime compensation issues the claimant seeks to bring before us, the claim before us is barred by res judicata.

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.