

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

Claimant: [name]

Organization: [agency component]
Naval Air Station Jacksonville, Florida

Claim: Waiver of Indebtedness for
Relocation Incentive

Agency decision: Denied

OPM decision: Denied

OPM file number: 12-0036

/s/ Linda Kazinetz for

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

10/31/13
Date

The claimant requests the U.S. Office of Personnel Management (OPM) reconsider her agency's debt collection action concerning a relocation incentive payment she received, and her agency's denial of her request for waiver of such repayment. The claim was transferred to OPM by the U.S. Civilian Board of Contract Appeals (CBCA) to which the claimant had originally sent her request. We received the claim on August 17, 2012, and the agency administrative report (AAR) on October 10, 2012. For the reasons discussed herein, the claim is denied.

The claimant previously occupied a [position] assigned to Naval Air Station (NAS) Meridian, Mississippi. Effective March 1, 2009, she was appointed to a [supervisory position] assigned to the NAS Joint Reserve Base (JRB) in New Orleans, Louisiana. In connection with this appointment, the claimant executed a Recruitment/Relocation/Retention Bonus Service Agreement, under which she was paid a relocation incentive in the amount of \$25,000. Her signed agreement states, in part:

I agree to serve in [component] NEW ORLEANS OFFICE for 1 year(s) in the position of [supervisory position].

* * * * *

That in the event I voluntarily, or because of misconduct, fail to complete the period of service in the position for which I am receiving the bonus, I will refund an amount of the bonus I have received as prescribed by the Activity policy or instruction, unless in accordance with prescribed regulations, it is determined that my failure to complete my agreed period of service is due to circumstances which are beyond my control.

The claimant acknowledges that she returned to the NAS Meridian office in June 2009 while continuing to perform the duties and responsibilities of the [supervisory position]. The agency subsequently determined the claimant failed to complete the terms of the service agreement and required reimbursement of the bonus payment in excess of the amount attributable to the completed portion of the service period established under the agreement. The agency calculated the claimant owed \$18,750, although the amount was later reduced to \$16,667 without further explanation.

The claimant requested a waiver of the debt to the Defense Finance and Accounting Service (DFAS) on June 10, 2011. DFAS denied her request on October 3, 2011. The claimant subsequently forwarded her waiver request to the CBCA.

As a result of legislative and executive action, the authority to waive overpayments of erroneous payments and allowances now resides with the heads of agencies, 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 involving erroneous payments of pay or allowances. Under 5 CFR 575.211(h), an authorized agency official may waive the requirement for an employee to repay relocation incentive payments attributable to uncompleted service when collection of the excess payments from the employee would be against equity and good conscience and not in the best interests of the United States. Therefore, contrary to what was implied by CBCA in its June 29, 2012, decision to the claimant, OPM does

not have jurisdiction to consider, or issue a decision on, the request for a waiver of a claimant's indebtedness to the United States. Because the issue of waiving the claimant's indebtedness is vested in the employing agency, the Department of the Navy, the claim contesting the agency's waiver decision must be denied for lack of jurisdiction.

The claimant states in an August 3, 2012, letter to OPM, "...I should not have to repay any amount to the agency for providing a service and I have fulfilled my commitment." She further states:

...I continued to provide the service from Mar 2009 thru September 2011. If I had not the agency in June 2009 should have terminated the agreement with reason. They did not because every written document, contract and personnel action was still in place and show I was the in the New Orleans [supervisory position]. I naturally understood I was in a temporary status in Meridian but tried to get the agency to submit a personnel action to make where I was traceable and regulatory, it never happen. Therefore, without a termination prior to March 2010, I was still under the terms under the original service agreement and could have been told to return. [sic]

The provisions of section 3702(a)(2) of title 31, United States Code (U.S.C.) and its implementing regulations (part 178 of title 5, Code of Federal Regulations (CFR)) are intended to provide recourse to challenge Federal agency decisions regarding entitlement to compensation. A claim settlement reflects the final Executive branch determination on the application of law and regulation with regard to the merits of a claim. With regard to a claimant who seeks to contest an agency's debt collection action, OPM's claims settlement authority is limited to determining whether a claimant owes an underlying debt to the Federal Government. In the instant case, the claimant challenges the agency's determination that she failed to comply with the terms of her service agreement and now owes the Government for the money she was paid to relocate to New Orleans, which is reviewable by OPM under the provisions of 31 U.S.C. 3702(a)(2).

Part 575, subpart B, of 5 CFR establishes criteria for granting a relocation incentive to employees. Incentives are payable to a current employee who must relocate to accept a position in a different geographic area provided the agency determines the position is likely to be difficult to fill in the absence of an incentive. Section 575.202 of 5 CFR defines a service agreement as:

...a written agreement between an agency and an employee under which the employee agrees to a specified period of employment of not more than 4 years with the agency at the new duty station to which relocated in return for payment of a relocation incentive.

The claimant was assigned to the position at NAS JRB New Orleans in March 2009. Meanwhile, the NAS Meridian's [functional specialist] resigned. The claimant states she returned to NAS Meridian in June 2009 to provide the post with an onsite [function] presence. In the AAR, the agency explains:

On or about 9 June 2009 [the claimant] stopped working at NAS JRB New Orleans and went back to Meridian, MS. [The claimant] was not reassigned to NAS Meridian nor was she directed to work at NAS Meridian on a full-time regular basis. Rather, the

claimant] on her volition and accord chose to voluntarily return to NAS Meridian on a permanent basis.

The record includes a June 22, 2009, email from the claimant to her supervisor and other management officials, titled [position] in Meridian, proposing various staffing recommendations including her “move” or “detail” back to Meridian. In July 2009, she began requesting reassignment back to NAS Meridian. As explained by the agency in the AAR, the claimant again requested reassignment to NAS Meridian but was denied by her supervisor on December 24, 2009. An anonymous complaint was subsequently filed with the Navy Region Southeast (NRSE) Inspector General (IG), reporting assertions regarding the claimant’s return to NAS Meridian despite the terms of the service agreement. The IG’s April 12, 2010, report found the claimant failed to fulfill the terms of the service agreement and recommended repayment of the bonus.

The claimant filed an informal administrative grievance on May 17, 2010, requesting in part “to be reassigned to NAS Meridian as a [supervisory position].” The request was approved, but the reassignment was delayed and not made effective until December 5, 2010. A July 9, 2010, letter from the Commander NRSE’s Total Force Management Director communicated concurrence with the IG’s findings and recommendations that the claimant repay the bonus for failure to execute the service agreement conditions. In response to a formal grievance filed by the claimant on June 30, 2010, the Commander NRSE’s Executive Director concluded in an August 5, 2010, letter: “. . .you are required to repay the prorated relocation bonus amount of approximately \$18,750 for nine months of the unfulfilled service requirement.”

The claimant’s letter to OPM asserts she completed the terms of her service agreement. She states that while working from NAS Meridian “every written document, contract and personnel action was still in place” showing her assignment to the New Orleans office while continuing to successfully perform her position’s [supervisory position] responsibilities, as documented by performance appraisals, with the full knowledge of her supervisor. Based on this argument, the claimant requests that OPM associate the compensation of a relocation incentive with the performance of her position’s duties and responsibilities regardless of the physical location of the work performed. This rationale is clearly contrary to the intent and plain language of the criteria for granting relocation incentives described in part 575, subpart B, of 5 CFR. While a salary is paid to an employee in return for the work performed, the unambiguous language of 5 CFR 575.202 indicates a relocation incentive is payable to an employee for agreeing to a period of employment with the agency *at the new duty station to which relocated* in return for payment of a relocation incentive.

The claimant acknowledges she was no longer physically working from NAS JRB New Orleans in June 2009. For example, the claimant’s July 9, 2009, email to her supervisor (titled "Reassignment Request") states:

I have been here in Meridian for the last couple of weeks covering this office all while managing, communicating with subordinates/managers/skippers/N1 staff members daily utilizing teleconference, telephone and VTC and finally providing over sighting and training.

The email shows the claimant returned to NAS Meridian approximately three months after signing a one-year service agreement to work in the NAS JRB New Orleans office. The claimant's letter to OPM states she "began working at the new duty location Jan 2009, prior to signing a service agreement in March 2009." However, the terms of the one-year service agreement which she signed are clear, stating that "[t]his agreement will be effective on 1 March 2009." Thus, we conclude the claimant did not perform the work of her position at the new duty station for the period specified as required by 5 CFR part 575 for the granting of a relocation incentive.

The claimant signed a one-year service agreement to remain in New Orleans with acknowledgement of liability for an unfulfilled commitment unless it is determined the failure is a result of circumstances beyond her control. To determine if circumstances were uncontrollable, we considered the claimant's August 3, 2012, letter to OPM, wherein she states agency officials "...knowingly allowed me to work from another location 50 miles¹ away from my assigned duties location..." The language here is revealing, and by stating that agency officials "allowed" her instead of "directed" her to work at NAS Meridian, the claimant demonstrates the actual decision to move from the NAS JRB New Orleans was the claimant's alone. The record does not include any evidence or documentation indicating an agency official directed the claimant to work at NAS Meridian. Thus, we conclude the claimant has offered no persuasive evidence demonstrating that her move from the NAS JRB New Orleans was anything other than voluntary. Therefore, the agency's decision that the claimant's move from the New Orleans to the Meridian office was not beyond her control and she is thus liable for reimbursement of excess incentive payment was not arbitrary, capricious, or unreasonable.

That the claimant's supervisor was aware of her working from the NAS Meridian office despite the terms of her service agreement has no bearing on our adjudication of this claim. It is well settled by the courts that payments of money from the Federal Treasury are limited to those authorized by statute, and the erroneous advice or actions of a Government employee cannot estop the Government from denying benefits not otherwise permitted by law. See *OPM v. Richmond*, 496 U.S. 414, 425-526 (1990); *Falso v. OPM*, 116 F.3d 459 (Fed.Cir. 1997); and 60 Comp. Gen. 417 (1981). Therefore, the supervisor's knowledge of the claimant's violating the terms of her service agreement does not confer an eligibility for payment of a relocation incentive not otherwise permitted by statute or its implementing regulations.

The claimant asserts in her letter to OPM that the Navy violated merit system principles and committed prohibited personnel practices (e.g., reprisal for disclosure, delayed processing her change in duty location, etc.). The claims jurisdiction of OPM is limited to consideration of the statutory and regulatory merits of the individual compensation or leave claims before us. It does not extend to conducting investigations into allegations of merit system principle violations and prohibited personnel practices at the request of individual claimants. Therefore, the claimant's assertions have no bearing on our claim settlement determination.

OPM does not conduct investigations or adversary hearings in adjudicating claims but relies on the written record presented by the parties. See *Frank A. Barone*, B-229439, May 25, 1988. Where the record presents an irreconcilable factual dispute, the burden of proof is on the claimant to establish the liability of the United States. 5 CFR 178.105; *Jones and Short*, B-

¹ The distance between the New Orleans and Meridian offices is nearly 200 miles.

205282, June 15, 1982. Where, as in this case, the agency's determination is reasonable, we will not substitute our judgment for that of the agency. See, e.g., *Jimmie D. Brewer*, B-205452, Mar. 15, 1982, as cited in *Philip M. Brey*, B-261517, December 26, 1995.

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.