

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

Claimant: [name]

Organization: Long Beach Investigative Field Office
Western Region Southern California
Western Region Field Investigations
Field Management
Operations
Federal Investigative Services
U.S. Office of Personnel Management
Tehachapi, California

Claim: Duty station for purpose of determining
locality pay

Agency decision: Denied

OPM decision: Denied

OPM file number: 13-0003

/s/ Judith A. Davis for

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

10/17/13

Date

The claimant, who is employed in an Investigator, GS-1810-12, position with the U.S. Office of Personnel Management (OPM), requests that OPM¹, her employing agency, change her official duty station from her residence in Tehachapi, Kern County, California, to Lancaster, Los Angeles County, California, the site of the Lancaster/Palmdale field office, for purposes of determining her locality pay, and provide back pay for the period March 2006 to present. Specifically, the claimant requests reimbursement in the amount of \$61,336.76 for the locality pay that she asserts was arbitrarily reduced in March 2006, plus any additional loss until a settlement is reached. We received the claim request on December 10, 2012, and the agency administrative report (AAR) on February 8, 2013. For the reasons discussed herein, the claim is denied.

The record shows the claimant filed her initial claim with OPM's servicing human resources office in September 2012. As provided in 31 U.S.C. § 3702(b)(1), every claim against the United States is barred unless such claim is received within six years after the date such claim first accrued. The Barring Act does not merely establish administrative guidelines, it specifically prescribes the time within which a claim must be received in order for it to be considered on its merits. OPM does not have any authority to disregard the provisions of the Barring Act, make exceptions to its provisions, or waive the time limitation that it imposes. *See Matter of Nguyen Thi Hao, supra; Matter of Jackie A. Murphy*, B-251301 (April 23, 1993); *Matter of Alfred L. Lillie*, B-209955, May 31, 1983; OPM File Number S9700855, May 28, 1998; OPM File Number 003505, September 9, 1999. Therefore, the period of the claim prior to September 2006 is time barred.

In March 2006, the claimant's duty station was changed from Los Angeles County, California, to Kern County, California. As a result, the claimant ceased to receive the Los Angeles locality pay adjustment applicable to Los Angeles County and began to receive the Rest of U.S. locality pay adjustment applicable to Kern County. The claimant states that from May 1996 through March 5, 2006, she received Los Angeles locality pay even though she and her family lived in Tehachapi. She states that she was assured she would continue to receive Los Angeles County locality pay and her family made financial decisions based on these assurances. She states she and her family would not have moved to Tehachapi if she had known that eventually she was going to lose Los Angeles locality pay.

The agency disagrees with the claimant and maintains it assigned her duty station appropriately. The agency states 5 CFR 531.605(a)(2) gives an agency discretion to determine the location where an employee's work activities are based, subject to the requirement that the official worksite must be in a locality pay area in which the employee regularly performs work. The agency states the claimant begins her work day from her home, parks her Government-owned vehicle at home, and is provided Internet access to perform work in her home. The agency also

¹ References to OPM as the "employing agency" and "the agency" refer to OPM's internal servicing human resources office in its role as the OPM component delegated the authority to issue an agency-level claim decision under section 178.102 of title 5, Code of Federal Regulations (CFR). References to OPM regarding the determinations made in this decision refer to Merit System Accountability and Compliance, the OPM component authorized to render the final Executive branch claim decision under the authority of 31 U.S.C. § 3702(a)(2).

describes the various work functions performed by the claimant at her home, and states such work occupies approximately 30-40 percent of her work hours. The agency states these factors support OPM's determination that the claimant's work activities are based at her home and that she regularly performs work at her home. The agency also states the claimant's primary investigative area is Bakersfield, which is also located in Kern County.

Under 5 CFR 531.604(b)(1), an agency determines an employee's locality rate by determining the employee's official worksite consistent with the rules in 5 CFR 531.605, states in relevant part, that:

(a)(1) Except as otherwise provided in this section, the official worksite is the location of an employee's position of record where the employee regularly performs his or her duties.

(2) If the employee's work involves recurring travel or the employee's work location varies on a recurring basis, the official worksite is the location where the work activities of the employee's position of record are based, as determined by the employing agency, subject to the requirement that the official worksite must be in a locality pay area in which the employee regularly performs work.

The regulatory language gives the agency discretion in determining where "the work activities of the employee's position of record are based" when the employee's work involves recurring travel or the work location varies on a recurring basis for purposes of 5 CFR 531.605, as long as it is in a locality pay area "in which the employee regularly performs work." Thus, when the regulatory language is permissive and gives the employing agency discretion in determining the employee's official worksite, the agency's action will not be questioned unless it is determined that the agency's action was arbitrary, capricious, or unreasonable. See OPM File Number S9601174 (undated); and OPM File Number S001638, June 26, 1998. The record shows the claimant regularly performs work in her home. Thus, the designation of her home as her work location for purposes of determining her locality pay rate cannot be considered arbitrary, capricious, or unreasonable, and therefore her claim must be denied.

The claims jurisdiction of OPM under section 3702(a)(2) of title 5, United States Code (U.S.C.), is limited to consideration of statutory and regulatory liability regarding compensation and leave issues. OPM has no authority to address the other issues the claimant raised in her compensation claim such as her allegations of age and sex discrimination, concerns regarding her conditions of employment, and the agency's denial of her requests for geographic reassignment. Accordingly, those claims must be denied for lack of lack of jurisdiction

This settlement is final. No further administrative review is available within OPM. Nothing in this settlement limits the employee's right to bring an action in an appropriate United States court.