

Date: September 8, 2003

Claimant: [name]

File Number: 03-0004

OPM Contact: Deborah Y. McKissick

The claimant is [a GS-11, step 1], with the National Park Service, United States Department of the Interior. The Office of Personnel Management (OPM) received the compensation claim on October 29, 2002 and the agency administrative report on January 9, 2003. The claimant's response to the agency administrative report was received on March 5, 2003. The claimant is requesting back pay for incorrect pay setting. For the reasons discussed herein, the claim is denied.

The agency believes that the claimant did not file a timely claim. Section 178.104(a) of title 5, Code of Federal Regulations (CFR), provides that all claims against the Federal government are subject to the 6-year statute of limitations contained in 31 U.S.C. § 3702(b). The statutory limitation was satisfied when the agency received the claim on July 5, 2002, which was within 6 years from the date the claim accrued, January 13, 2002. Hence, the claim was timely filed with the agency and OPM.

The claimant and agency agree that the claimant was offered the VIIS position at the [GS-11], step 1, on October 16, 2001 and he accepted the offer on October 17, 2001. The claimant disagrees with the step 1 rate at which his pay was set when he moved voluntarily from [a GS-12, step 4] position, at the Mount Rainer National Park, to [a GS-11], step 1 position, at the Virgin Islands National Park (VIIS), effective January 13, 2002. The claimant believes the agency should have used the Southeast Region's highest previous rate rule to set his pay at GS-11, step 10, or compromised and set his pay at GS-11, step 5.

The claimant submitted copies of Notification of Personnel Action Forms (SF-50) regarding the transfer to the VIIS position. A SF-50 depicted a personnel action that changed the claimant's position from a GS-12, step 4, to a lower grade, GS-11, step 10, position. The SF-50 processed to correct the claimant's grade from GS-12, step 4 to GS-11, step 1, was approved on January 13, 2002.

The claimant also submitted an agency's memorandum, dated October 1, 1997, which established the Southeast Region's highest previous rate policy, and superseded the Southeast Region Personnel Letter No. 94-02, dated January 13, 1994. The Southeast Region's highest previous rate policy provides that "It is the policy of the Southeast Region

to pay highest previous rate when an NPS employee voluntarily changes to a lower graded permanentpositionIf it falls between two rates of the lower grade, the higher rate will be given. Determination will be made on all employee requested downgrades on a case-by-case basis and must be approved by the Assistant Regional Director, Human Resources....The payment of highest previous rate is dependent on the availability of funds. However, the Assistant Regional Director, Human Resources must be notified in writing prior to any decision to reject a candidate or deny highest previous rate because of lack of funds. EXCEPTIONS: requests for other exceptions to this policy will be handled on a case-by-case basis. Submit written justification to the Assistant Regional Director, Human Resources, with date and approval/disapproval space provided.”

The agency administrative report states that the VIIS superintendent requested an exception to the Southeast Region’s highest previous rate policy in order to confirm the GS-11, step 1 rate, on November 29, 2001. The Regional Personnel Officer approved the exception on December 4, 2002. On December 4, 2002, the claimant sought a compromise salary at the GS-11, step 5, which the agency denied.

Generally, upon voluntary change to lower grade, a General Schedule employee is entitled to the rate of basic pay for step 1 of the lower grade. The maximum payable rate rule at 5 CFR 531.203(c) provides the maximum rate of basic pay that an agency may pay to an employee upon change to lower grade (or other action) based on the employee’s highest previous rate derived under 5 CFR 531.203(d), unless the employee is entitled to a higher rate under another authority. This means that when a General Schedule employee is changed to a lower grade voluntarily the agency may follow the rule in 5 CFR 531.203(c) and (d) to set the employee’s pay above step 1 of the lower grade. Application of the maximum payable rate rule is subject to agency discretion, consistent with its established pay-setting policies. For this claim, the record shows that the agency’s decision not to use the maximum payable rate rule or the claimant’s highest previous rate to set pay upon voluntary change to lower grade was consistent with its established pay-setting policies. Therefore, the agency appropriately set the claimant’s pay at the GS-11, step 1, rate.

OPM does not conduct adversary hearings, but settles claims on the basis of the evidence submitted by the claimant and the written record submitted by the government agency involved in the claim. 5 CFR 178.105; *Matter of John B. Tucker*, B-215346, March 29, 1985. 5 CFR 178.105; *Matter of John B. Tucker*, B-215346, March 29, 1985. Moreover, the burden of proof is on the claimant to prove the liability of the government and his or her right to payment. 5 CFR 178.105; *Matter of Jones and Short*, B-205282, June 15, 1982. Thus, where the written record presents an irreconcilable dispute of fact between a government agency and an individual claimant, the factual dispute is settled in favor of the agency, absent clear and convincing evidence to the contrary. 5 CFR 178.105; *Matter of Staff Sergeant Eugene K. Krampotich*, B-249027, November 5, 1992; *Matter of Elias S. Frey*, B-208911, March 6, 1984; *Matter of Charles F. Callis*, B-205118, March 8, 1982. The agency set the claimant’s pay in accordance with its pay setting policy. Hence, the claim is denied.

This settlement is final. No further administrative review is available within the Office of Personnel Management. Nothing in this settlement limits the claimant’s right to bring an action in an appropriate United States Court.