

Compensation Claim Decision
Under section 3102 of title 31, United States Code

Claimant: [name]

Organization: [agency component]
U.S. Army Reserve
Charlotte, North Carolina

Claim: Request for Salary Adjustment
(FWS to GS conversion)

Agency decision: Denied

OPM decision: Denied

OPM contact: Robert D. Hendler

OPM file number: 06-0006

/s/ for

Robert D. Hendler
Classification and Pay Claims
Program Manager
Center for Merit System Accountability

9/29/2006

Date

The claimant occupies a [GS-11] position with the [agency component], U.S. Army Reserve, in Charlotte, North Carolina. He requests the Office of Personnel Management (OPM) reconsider his agency's decision to adjust his salary due to implementation of pay regulations issued May 31, 2005, and effective May 1, 2005. We received his request on October 5, 2005, and the agency administrative report on March 21, 2006. For the reasons discussed herein, the claim is denied.

The claimant was previously employed in a [WS-9] job with the 81st RRC, AMSA 122, U.S. Army Reserve, in Charlotte, North Carolina. On April 23, 2005, he received a written offer of employment for his current position of [GS-11], with his pay set at step 4. He accepted the position and entered on duty May 1, 2005. On August 31, 2005, he received written notification from the Civilian Personnel Operations Center (CPOC), North Central Region, indicating he had been overpaid as a result of the retroactive application of new pay-setting regulations issued by OPM. The new regulations implement section 301 of the Federal Workforce Flexibility Act of 2004 (Public Law 108-411, October 30, 2004) and significantly change how pay actions involving locality rates are calculated. As a result, the claimant's pay was adjusted to [GS-11], step 1, retroactive to May 1, 2005. The claimant does not allege that his pay was set incorrectly under these regulations, but rather requests that his pay be restored to GS-11, step 4, because he feels that this was the commitment that was made at the time of hire. He states that the pay adjustment has placed an undue financial burden on his family and is fundamentally unfair.

The statutory requirements of Public Law 108-411, which resulted in a change in OPM's pay-setting regulations at 5 CFR part 531, subpart B, and the consequent change in the claimant's salary, may not be waived or otherwise modified. Section 301(d) of the Act stipulated that its provisions "shall take effect on the first day of the first applicable pay period beginning on or after the 180th day after the date of the enactment of this Act," i.e., May 1, 2005. While OPM did not publish interim regulations until May 31, 2005 (see Federal Register, Volume 70, No. 103, Tuesday, May 31, 2005, 32178-31315), the regulations were effective May 1, 2005, as mandated by the Act. Payments of money from the Federal Treasury are limited to those authorized by law, even where this may cause hardship in individual cases. *Office of Personnel Management v. Richmond*, 496 U.S. 414 (1990).

Under the maximum payable rate (MPR) rule in effect before May 1, 2005, when an employee moved from an FWS position to a GS position, his or her FWS rate was first compared to the GS base rate range for the employee's grade, *excluding locality pay*. The MPR was set at the lowest step in the underlying rate range that equaled or exceeded the employee's FWS rate. The applicable GS locality payment was then computed as a percentage of that step, and that amount was added to the rate for the step.

In the claimant's case, his FWS rate of \$48,272, (his hourly rate of \$23.13 X 2,087 hours/year) was initially compared to the 2005 GS-11 rate range on the 2005 General Schedule, excluding any locality pay. The lowest step that equaled or exceeded \$48,272 was GS-11, step 4 (\$49,763) and his pay was set at that rate. The 2005 locality payment applicable in the Rest of the United States (RUS) locality pay area (which includes Charlotte, North Carolina) of 11.72 percent was then computed based on that rate. The resulting \$5,832

locality payment ($\$49,763 \times .1172$) was added to the GS-11, step 4, rate ($\$49,763$). The resulting amount of $\$55,595$ equaled the GS-11, step 4, on the 2005 RUS locality pay table.

Under the new GS maximum payable rate rule at 5 CFR 531.221(d)(1) in effect on and after May 1, 2005, when an employee moves from a FWS position to a GS position at the same geographic location, his or her FWS rate is compared to the highest applicable GS rate range for the employee's grade, *including locality pay*. The MPR is set at the lowest step in the locality rate range that equals or exceeds the highest previous rate. In the claimant's case, his FWS rate of $\$48,272$ was compared to the GS-11 rate range on the 2005 RUS locality pay table. The lowest step in that range that equaled or exceeded $\$48,272$ was GS-11, step 1 ($\$50,541$), and his pay was set at that rate.

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.