

Compensation Claim Decision
Under section 3702 of title 31, United States Code

Claimant: [name]

Organization: [agency component]
Department of the Army
[installation & State]

Claim: \$25,000 based on principles of equity,
justice, and contract

Agency decision: N/A

OPM decision: Denied; Lack of jurisdiction

OPM file number: 08-0094

//Judith A. Davis for

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

9/3/2008

Date

The claimant states he is a retired civil servant who previously worked for the [agency component] at [installation & State]. In his May 9, 2008, claim identifying the “GOVERNMENT ACCOUNTING OFFICE [sic], OFFICE OF PERSONNEL MANAGEMENT [OPM] and THE DEPARTMENT OF THE ARMY [DA]” as respondents, he requests to be “reimbursed by the Federal Government in the sum of Twenty Five Thousand dollars. (\$25,000.00).” OPM received his request on May 14, 2008. For the reasons discussed herein, the claim is denied for lack of subject-matter jurisdiction.

The claimant’s request for payment contains a history of repeated suggestions submitted to his former employing activity to change the method of calculating Federal civilian pay “by dividing the 2087 hours into the approved yearly salary instead of 2080 that was being used at the time.” He states he submitted his first suggestion on this matter to the activity’s Incentive Awards Committee on December 17, 1965. He also sent the suggestion to Senator John J. Sparkman who, in turn, forwarded it to the U.S. Civil Service Commission (CSC) for review. Senator Sparkman received CSC’s rejection of the suggestion on April 6, 1966. The claimant then forwarded the suggestion to the General Accounting Office on April 18, 1966, which rejected the suggestion on May 20, 1966. The claimant states he included this same suggestion in conjunction with a suggestion regarding leave on August 15, 1972, to the activity Incentive Awards Committee, which was forwarded to and subsequently rejected by the U.S. Civil Service Commission on January 11, 1973.

The claimant states he submitted the same suggestion on Federal civilian pay calculation to the activity Incentive Awards Committee on January 26, 1981, which assigned a number (164A-0299-81) which the claimant construed as making it an “eligible suggestion”. He states he also sent the suggestion to Senator Howard Baker on January 30, 1981, who in turn forwarded the letter and attachments to Senator Ted Stevens who then sent it to OPM for evaluation on March 24, 1981. The claimant points to correspondence in the present claim request as supporting the proposition that OPM and the former General Accounting Office (now the Government Accountability Office (GAO)) were aware of his suggestion, and with regard to GAO’s August 26, 1981, response states:

Both their alternatives were based on the same principles from my suggestion, which I made both to the Incentives Board and to Senator Stevens. But more on point, their second alternative was exactly what I proposed and determined a cost savings of 120 million dollars for the first year.

.....

6. On 13 April the Assistant Director for Pay Programs of the OPM sent a memo to the Director of Office [of] Pay and Benefits in which he admits the value of the same ideas as those I had forwarded in my suggestion, mentioning the request from GAO for reconsideration, and stating that 2087 annual divisor would probably be used.

The claimant states his suggestion was ultimately denied again, but on a different basis: “the alleged impossibility in determining ‘any individual as the suggestor (sic) of any change that the OPM might want to recommend to congress.’” The claimant asserts that approximately one year later:

I was shocked to learn [from a newspaper article] that congress had actually passed into law, my very suggestion, the same one I had sent to my congressmen, and submitted through the Army Suggestion program over the years, and which had been rejected as undesirable!”

13. In fact, on 08 September 1982, congress had passed into law, PL 97-253. Section 310(b)(1) of the law constituted the official implementation of my suggestion and the beginning of savings for the federal government.

The linchpin of the claimant’s rationale is:

...government agencies and/or congressmen involved must have actually forwarded my suggestion, and moved for its implementation....On 27 September 1982, I wrote to the Incentive Awards Committee enclosing a copy of Mr. Crammer’s article seeking redress. While I titled it “Suggestion Reevaluation” what I intended was an investigation into why I was not properly compensated for my suggestion that had indeed been adopted. For I did, and still do believe that official action had been taken to implement my suggestion and that such official action had been taken during the time my proprietary rights on my suggestions were still intact.

He cites AR 67-20, paragraph 2-9(b), dated 1978, governing the program at the time of his last suggestion submission, allowing for the requesting of an investigation and “holds that if a *‘direct relationship can be established between the suggestion and official action to implement the ideas in the suggestion, the suggester will be given appropriate compensation’*” during the period for which proprietary rights have been granted. The claimant points to what he believes is further evidence establishing that Senator Stevens and others he believes were aware of his suggestion were privy to and part of the legislation he alleges to have effected his suggestion.

Subject-matter jurisdiction

The claimant has not proffered any documentation establishing his specific suggestion was approved by a Government official with the authority to do so. Instead, documentation provided by the claimant (See e.g., Exhibit O, August 26, 1981, GAO letter to The Honorable Mary Rose Oakar, Subject: Alternatives to the Current Method of Computing General Schedule Pay (FPCD-81-60); OPM memorandum on GAO Report “Alternatives to the Current Method of Computing General Schedule Pay” (FPDC-81-60)) makes clear no Executive branch agency or official had the authority to approve the claimant’s suggestion since his proposed suggestion required legislative action. Therefore, contrary to the claimant’s assertions, DA and OPM were without authority to approve an award. The claimant’s reliance on DA award program regulations to vest the claimant with a proprietary right in this matter is similarly misplaced.

Claimant has failed to provide probative evidence showing his suggestion was officially accepted. As noted by the claimant in his rationale and documents he submitted, neither the Civil Service Commission nor OPM ever endorsed the acceptance of the claimant’s suggestion. Exhibit P shows GAO declined to take a position on the suggestion, stating:

We believe that changing the present method of computation to either alternative is a matter for Congress to decide....Such a change may have a negative effect on employee morale, especially in view of the fact General Schedule employees have not received comparability increases in recent years.

We did not obtain agency comments because this is an informal report containing no recommendations.

The claimant attempts to rely on the claims settlement process in part 178 of title 5, Code of Federal Regulations (CFR), implementing the provisions of section 3702(a)(2) of title 31, United States Code (U.S.C.), to make final suggestion award determinations on behalf of the Executive branch. However, OPM's authority under 31 U.S.C. § 3702 is narrow and limited to adjudications of compensation and leave claims. Section 3702 does not include the authority to authorize a suggestion award, particularly suggestions not subject to Executive branch approval. Section 3702 also does not vest OPM with the authority to settle "contract" disputes as the claimant would have us do. Accordingly, OPM has no jurisdiction to adjudicate the claimant's suggestion award claim. The other issues raised by the claimant which are also outside the scope of the authority under section 3702 (e.g., alleged "fraudulent denials" and equitable tolling) are moot and will not be addressed.

Although we may not render a decision on this claim, we note the claimant's "Special Pleas" are also misplaced. Compensation claims against the Federal Government do not require administrative exhaustion before they may be brought before an appropriate United States court. There is no provision in statute for interest to be paid on awards. See B-202039, April 3, 1981, and May 7, 1982. The claims settlement process also does not provide for our forwarding such a request to Congress at the claimant's behest.

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.