

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

**Claimant:** [name]

**Organization:** [agency component]  
Internal Revenue Service  
U.S. Department of the Treasury  
[city & State]

**Claim:** Annual salary Performance Based Increase (PBI) and full year-end Performance Bonus for FY 2009 job performance

**Agency decision:** N/A

**OPM decision:** Denied; Lack of subject-matter jurisdiction

**OPM file number:** 11-0002

//Judith A. Davis for

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Robert D. Hendler  
Classification and Pay Claims  
Program Manager  
Merit System Audit and Compliance

4/5/2011

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Date

The claimant, who occupies a Supervisory General Engineer, IR-801-04, position with the Internal Revenue Service (IRS), requests that the U.S. Office of Personnel Management (OPM) review his claim for “an annual salary “Performance Based Increase” (PBI) to which [he] was entitled, effective January 3, 2010,” and “the full year-end Internal Revenue Pay Plan (IR) Performance Bonus payment to which [he] was entitled for [his] FY2009 job performance.” OPM received the claim request on November 4, 2010. For the reasons discussed herein, the claim is denied for lack of subject-matter jurisdiction.

Under section 3702(a)(2) of title 31, United States Code (U.S.C.), OPM is responsible for settling Federal civilian employee compensation and leave claims. Section 3702(b)(1) of title 31, U.S.C., states a claim against the Government presented under this section must contain the signature and address of the claimant or an authorized representative. The claim must be received by the official responsible under subsection (a) for settling the claim or by the agency that conducts the activity from which the claim arises within six years after the claim accrues. Implementing regulations promulgated by OPM in part 178 of title 5, Code of Federal Regulations (CFR), require that a claim must be submitted in writing and must be signed by the claimant or the claimant’s representative. See 5 CFR 178.102(a). OPM will not accept and adjudicate a claim until the claimant has received an agency denial. See 5 CFR 178.102(a). Under 5 CFR 178.105, the burden is upon the claimant to establish the timeliness of the claim, the liability of the Government, and the claimant’s right to payment. Settlement of claims is based on the written record only.

The claimant has not provided documentation showing he has filed a signed, written claim with IRS or received a final IRS denial on the issues of his claim request to OPM. The email from a staff member of IRS’ Compensation and Leave Branch, Human Capital Office-Workforce Progression and Management, which the claimant identifies as the agency denial of his claim, does not meet the previously stated statutory and regulatory requirements. In his claim request, the claimant states he submitted and re-submitted his concerns “both verbally and in writing to [his] Territory Manager (who consulted with her employment point of contact, [name]) and Human Resources (via the IRS help desk).” The copies he provided of these contacts consist of emails and thus do not establish he has filed a signed, written claim with IRS or preserved his claim as required by controlling statute and regulation. Nevertheless, we may render a decision on this claim based on lack of jurisdiction.

The claimant states he received a temporary promotion from his permanent GS-13 General Engineer position to his current Supervisory General Engineer, IR-801-04, position from August 17, 2008, to November 21, 2009, at which time the promotion was made permanent. He states that, based on the Internal Revenue Manual:

I should have been:

- (1) rated on the temporary IR position I held throughout FY2009, as of 9/30/2009;
- (2) treated as eligible for a PBI, effective 1/3/2010, based on IR rating of record, and;
- (3) placed in the IR Bonus pool for FY2009 that covers the IR position

Based on what he believes the appropriate rating should be, the claimant requests a \$1,977 increase in his year-end bonus “due again to the negligent errors in [his] performance handling.” The claimant also requests a \$7,041 adjustment to his “annual salary via SF-50 retroactive to

1/3/2010,” or, if OPM “can only issue a one-time payment and not adjust [his] future salary, then [he] would ask for two years adjustment to capture some of the future earnings lost (\$14,082).”

The authority in section 31 U.S.C. § 3702(a)(2) is narrow and limited to the adjudication of compensation and leave claims. Section 3702 does not include the authority to review an agency’s interpretation and application of its performance management regulations and processes which the claimant is attempting to challenge. Therefore, OPM does not consider such appeals within the context of the claims adjudication function it performs under section 31 U.S.C. § 3702(a)(2). The claimant’s attempt to assert OPM’s jurisdiction on this matter is misplaced as OPM’s claims adjudication authority is limited to reviewing whether the amount of funds expended incident to an agency’s performance management decision is appropriate. Therefore, the claim is denied for lack of subject-matter jurisdiction.

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.