

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

**Claimant:** [name]

**Organization:** [agency component]  
Department of the Army  
[location]

**Claim:** Pay setting  
Promotion with geographic relocation

**Agency decision:** Denied

**OPM decision:** Denied

**OPM contact:** Robert D. Hendler

**OPM file number:** 06-0007

/s/ for

---

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

7/7/2006

---

Date

The claimant occupies a [GS-13] position with the [agency component], at [location]. He was previously employed in a [GS-12] position in Mannheim, Germany. He asks the Office of Personnel Management (OPM) to review his agency's decision not to set his pay in the new position at [GS-13], step 4, as he was originally advised in what he states was a "good faith" offer. He provided a copy of a May 24, 2005, letter acknowledging his selection for the position which cited that rate, [GS-13], step 4, at \$82,266 per annum. We received the claim on November 3, 2005, and the agency's administrative report (AAR) on March 21, 2006.

The claimant accepted the [GS-13] position on May 18, 2005, and entered on duty July 24, 2005. The AAR stated the salary rate indicated in the letter offering the position, GS-301-13, step 4, at \$82,266 per annum, was determined in accordance with the pay setting rules and procedures in effect prior to May 1, 2005. The Standard Form (SF) 50 assigning the claimant to the new position, effective July 24, 2005, set his pay at GS-13, step 1, in accordance with the new pay-setting regulations. The new regulations implemented section 301 of the Federal Workforce Flexibility Act of 2004 (Public Law 108-411, October 30, 2004) and significantly changed how pay setting involving special rates and locality rates are calculated. The claimant asserts he was not given any notice of impending changes in pay policy and, had he been aware of changes to the offered salary, he would have declined the offer. He believes he has suffered a financial hardship as a result of the changes.

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, 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 180<sup>th</sup> 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).

The agency's report indicated that the salary of the claimant's original position, [GS-12], step 4, \$65,606, was a special rate applicable to IT occupations outside the 48 contiguous States. Using the promotion rule in effect prior to May 1, 2005, the agency offered the employee a two-step increase based on that special rate. The resulting rate was then compared to the GS-13 base rate range, since the employee was promoted to a non-special rate position. Locality rates applicable to the GS-13 position were ignored in applying the former promotion rule. The claimant was entitled to the lowest step rate in the GS-13 base rate range that equaled or exceeded his existing GS-12 special rate increased by two steps, which was GS-13, step 4. The claimant would have received the Minneapolis-St. Paul locality payment on top of the promoted rate, which resulted in the offered salary rate of \$82,266.

Section 301 amended the promotion statute so that when an employee is promoted to a position at a different official worksite where different pay schedules apply, the agency must first convert the employee's rate(s) of basic pay to the applicable pay schedule(s) for the new official worksite based on the employee's position of record (including grade) and step (or rate) before promotion. The resulting rate(s) must be treated as the employee's existing rate(s) in processing the promotion action. (See 5 U.S.C. 5334(g) and OPM's implementing regulations at 5 CFR 531.214(b).) A major objective of the geographic conversion rule is to ensure that an employee

whose official worksite is moved to a new location receives the same rate of pay as an employee at the same grade and step who was already stationed at the new location and who undergoes the same pay action.

In the instant case, the claimant's GS-12, step 4, special rate (\$65,606) was converted to a GS-12, step 4, locality rate (\$69,179), since the Minneapolis-St. Paul-St. Cloud locality rate range was the highest applicable rate range that applied to the employee's GS-12 position in the new location. This salary rate was used to determine the two-step promotion entitlement to GS-12, step 6; i.e., \$73,371. By comparison with the GS-13 locality rate range (i.e., the highest applicable rate range that applies to the new position), this resulted in setting pay at \$74,788, or GS-13, step 1. Thus, we find the agency set the claimant's pay properly.

The claimant believes the retroactive implementation of new policy resulted in a net reduction in pay and he hopes his appeal to OPM will relieve the financial hardship this situation has created. However, as noted previously, controlling statute and case law precludes us from doing so.

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.